Parliamentary Committees



Mines Legislation (Resources Safety) Amendment Bill 2018

Report No. 3, 56th Parliament
Education, Employment and Small Business Committee
May 2018

Education, Employment and Small Business Committee

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Acknowledgements

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Abbreviations

2017 Bill	Mines Legislation (Resources Safety) Amendment Bill 2017
AWU	Australian Workers' Union
Bill/2018 Bill	Mines Legislation (Resources Safety) Amendment Bill 2018
BoE	Board of Examiners
CCAA	Cement, Concrete and Aggregates Australia
CFMEU	Construction, Forestry, Mining and Energy Union[1]
CMSHA	*Coal Mining Safety and Health Act 1999*
CMSHAC	Coal Mining Safety and Health Advisory Committee
committee	Education, Employment and Small Business Committee
CPD	continuing professional development
CWP	coal workers' pneumoconiosis
DNRM/former department	Department of Natural Resources and Mines
DNRME/department	Department of Natural Resources, Mines and Energy
FLP	Fundamental legislative principle
IPNRC/former committee	Infrastructure, Planning and Natural Resources Committee, 55th Parliament
LSA	*Legislative Standards Act 1992*
Minister	Hon Dr Anthony Lynham MP, Minister for Natural Resources, Mines and Energy
MMAA	Mine Managers Association of Australia
MQSHA	*Mining and Quarrying Safety and Health Act 1999*
MSHAC	Mining Safety and Health Advisory Committee
MVA	Mine Ventilation Australia
NSW	New South Wales
OQPC	Office of the Queensland Parliamentary Counsel
QLS	Queensland Law Society
QRC	Queensland Resources Council
RIS	Regulatory Impact Statement
SHMS	Safety and health management system

[1] Note: the CFMEU was amalgamated with the Maritime Union of Australia, and the Textile, Clothing and Footwear Union of Australia on 27 March 2018. It is referred to as the 'CFMEU' in this report.

SSE	Site senior executive
Together	Together Queensland Industrial Union of Employees
WHS Act	*Work Health and Safety Act 2011*

Chair's foreword

This report presents a summary of the Education, Employment and Small Business Committee's examination of the Mines Legislation (Resources Safety) Amendment Bill 2018.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The committee was aided in this undertaking by the work of the former Infrastructure, Planning and Natural Resources Committee (IPNRC) of the 55th Parliament, which considered and reported on the 2017 version of the Bill.

On behalf of the committee, I would like to thank those individuals and organisations who made written submissions on the Bill and attended as witnesses at the public hearings. I would also like to thank the teams at Glencore's Mount Isa Mines and Anglo American's Moranbah North Mine, who helped provide the committee with vital insights into the practical implementation of mining safety and health legislation in operational contexts and environments, during the committee's site visits to their mining operations.

Given the inherent hazards associated with the mining industry, there will always be a need to review and improve safety and health systems where possible. The expertise provided by stakeholders to the inquiry was of invaluable assistance in understanding these hazards, the potential benefits and implications of the Bill, and the mining sector as a whole.

I would like to thank my fellow committee members for their contributions to this inquiry.

I also thank our committee secretariat staff, Hansard reporters, and the department for their assistance.

I commend this report to the House.

Ms Leanne Linard MP

Chair

Recommendations

1 Introduction

1.1 Role of the committee

The Education, Employment and Small Business Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[2]

The committee's primary areas of responsibility include:

- Education
- Industrial Relations
- Employment and Small Business, and
- Training and Skills Development.

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 referral and committee process

The Mines Legislation (Resources Safety) Amendment Bill 2018 (Bill/2018 Bill) was introduced into the Legislative Assembly by the Hon Dr Anthony Lynham MP, Minister for Natural Resources, Mines and Energy (Minister) on 20 March 2018 and referred to the committee on 22 March 2018. The committee is to report to the Legislative Assembly by 8 May 2018.

On 23 October 2017 the Infrastructure, Planning and Natural Resources Committee (IPNRC/former committee) of the 55th Parliament reported on the Mines Legislation (Resources Safety) Amendment Bill 2017 (2017 Bill), which contained similar provisions to the 2018 Bill. The IPNRC report recommended that the Bill be passed and made two further recommendations.[3] The 2017 Bill lapsed when the 55th Parliament was dissolved on 29 October 2017.

This committee's inquiry process included:

- consideration of the evidence provided to the IPNRC in 2017
- an invitation to stakeholders and committee subscribers to make written submissions – nine submissions were received (see Appendix A for a list of submitters)
- a public briefing from the Department of Natural Resources, Mines and Energy (DNRME/department) on the Bill (see Appendix B for a list of officials)
- public hearings in Mt Isa on 18 April 2018 and Moranbah on 19 April 2018 (see Appendix C for a list of witnesses)
- site visits to Mt Isa Mines on 18 April 2018 and Moranbah North Mine on 19 April 2018, and
- reviewing written advice from the department on the Bill and in response to matters raised in submissions.

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2 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

3 Infrastructure, Planning and Natural Resources Committee (IPNRC), *Report No 57, 55th Parliament, Mines Legislation (Resources Safety) Amendment Bill 2017*, October 2017, http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T2065.pdf.

The submissions, advice from the department and transcripts of the briefing and hearings are available on the committee's inquiry webpage.[4]

1.3 Policy objectives of the Bill

The explanatory notes advised that consideration of amendments to the mine safety and health framework commenced in 2013,[5] with the re-identification of coal workers' pneumoconiosis (CWP) also highlighting 'the need for continuous improvement of regulatory frameworks'.[6] In introducing the Bill, the Minister advised:

> *Collectively, the initiatives will provide greater transparency and accountability, improve compliance and enforcement of safety and health standards, or improve mine safety and health standards or systems.*[7]

The objectives of the Bill are to address 15 matters identified for improvement in the resources safety and health regulatory framework by implementing amendments to the *Coal Mining Safety and Health Act 1999* (CMSHA) and the *Mining and Quarrying Safety and Health Act 1999* (MQSHA) in relation to:

- ventilation officer competencies
- inspector powers including inspector workplace entry
- manufacturer, supplier, designer and importer notification requirements
- contractor and service provider management
- advisory committees and Board of Examiners membership
- safety and health management system (SHMS) requirements
- register to be kept by Board of Examiners
- health surveillance
- notification of diseases
- release of information
- penalties
- officer obligations
- continuing professional development (CPD)
- suspension or cancellation of certificates of competency and site senior executive (SSE) notices, and
- civil penalties.[8]

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4 The committee's inquiry webpage is accessible at http://www.parliament.qld.gov.au/work-of-committees/committees/EESBC/inquiries/current-inquiries/minesLAB2018.

5 Explanatory notes, p 22.

6 Explanatory notes, p 1. See also 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*, May 2017, http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T815.pdf.

7 Queensland Parliament, Record of Proceedings, 20 March 2018, p 475.

8 Explanatory notes, p 1.

1.4 Government consultation on the Bill

The explanatory notes outline the consultation undertaken in regard to the mine safety and health framework and the amendments proposed in the Bill. This consultation included:

- the release of a Consultation Regulatory Impact Statement (RIS) titled *Queensland's Mine Safety Framework* in 2013, which outlined policy options for addressing the identified issues within the CMSHA and the MQSHA – 246 responses received
- meetings with stakeholders from late 2016 into 2017 to explain and discuss proposals and to encourage broader consensus or compromise to respond to significant safety and health concerns, for example, about the competency of ventilation officers at underground coal mines
- the formation of tripartite working groups consisting of industry, union and departmental representatives in February 2017 to consult on the essential proposals to be progressed in a Bill (working group representatives then consulted more broadly with their industry or union colleagues about the proposals before providing in-principle support)
- informing the advisory committees established under the CMSHA and MQSHA of the proposals, and
- limited consultation in August 2017 on the proposals relating to imposing civil penalties and the power for the chief executive to suspend or cancel statutory certificates of competency.[9]

The explanatory notes advised the following results of these consultation processes:

> *The final proposals are mainly broadly supported by industry and unions. The advisory committees, established under the CMSHA and MQSHA, were also advised of the proposals. Minor changes have been included in this Bill based on feedback in 2017 from stakeholders and the advisory committee.*
>
> *… Industry did not indicate support for proposals to increase penalties or impose civil penalties, however this change brings mines into alignment with other workplaces.*
>
> *Industry has also raised concerns regarding the implementation of the proposal to require continuing professional development for certificate of competency holders, but in principle see benefit in the proposal. Further consultation will occur when the regulation is developed to implement the proposal.*
>
> *Previous consultation with all government agencies in early 2017 resulted in concerns being expressed in relation to proposals not included in this Bill. The changes being delivered through this Bill that were subject to that earlier consultation were generally supported by all agencies.*[10]

The explanatory notes also advised that the mines inspectorate within the department has worked with small scale and gem mines in recent years to prepare them for the SHMS requirements being established by the Bill:

> *Unlike larger operators, it is recognised that smaller scale opal and gemstone mine operators with 4 or fewer workers may not have the administrative capability to set up and implement these systems. To assist, the mines inspectorate will provide resources including a simple SHMS template to assist small opal or gem mine operators. Industry associations will be used to help implement the SHMS requirement for small opal or gem mines with 5 to 10 workers.* [11]

9 Explanatory notes, p 22.

10 Explanatory notes, p 22.

11 Explanatory notes, p 23.

In relation to consultation with government agencies the explanatory notes advised:

- while previous consultation with all government agencies in early 2017 resulted in concerns being expressed in relation to proposals not included in this Bill, the changes being delivered through this Bill that were subject to that earlier consultation were generally supported by all agencies
- the Office of Best Practice Regulation, Queensland Productivity Commission has provided RIS exemptions for the amendments to introduce civil penalties and the power to suspend or cancel statutory certificates, and endorsed:
    - a part 1 Decision RIS covering eight of the topics in the Bill, and
    - amendments to the Coal Mining Safety and Health Regulation 2017 requiring explosion barriers in underground coal mines, as these proposals were included in the 2013 Consultation RIS.[12]

The explanatory notes also advised that 'other legislative proposals included in this submission were reviewed by the Queensland Productivity Commission in 2016 and 2017 and were assessed as unlikely to result in any significant adverse impacts'.[13]

The Bill proposes a number of new amendments in response to stakeholder consultation during the 2017 Parliamentary committee inquiry and consultation undertaken by the department in late December 2017 with the Coal Mining Safety and Health Advisory Committee (CMSHAC).[14]

A number of stakeholders commented on the consultation undertaken by the Government on the Bill. The Queensland Resources Council (QRC) noted that some of the proposals had been subjected to very limited consultation prior to the introduction of the 2017 Bill:

> *Since then the IPNRC tabled its report on the 2017 Bill and the proposals have been discussed by the tripartite Coal Mining Safety and Health Advisory Committee (CMSHAC). Apparently, because of that discussion alone, a small number of changes have been made to the 2018 Bill… Most of these changes are supported by the QRC where they reflect the unanimous view of the Committee, even though some provisions now vary slightly from that supported in the QRC's 2017 submission. However, it is noted that a unanimous view of the CMSHAC does not necessarily equate to a unanimous view amongst industry, particularly for matters not related to coal.*[15]

The Construction, Forestry, Mining and Energy Union (CFMEU) advised that the current Bill was put forward without major parties, who use the legislation daily, being aware of its introduction:

> *Despite Minister Lynham's first reading speech, there has been no consultation since the 2017 bill lapsed—at least none with the CFMEU which represents the majority of coalmine workers. The process for review of the Queensland coalmining safety and health legislation prior to the Newman government was through tripartite consultation and discussion. This has been changed to a policy division of the department developing legislation with little consultation until after the bill was introduced and had its first reading. Then we have been told that there is little chance of change being made.*[16]

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12 Explanatory notes, p 22.

13 Explanatory notes, pp 22-23.

14 Department of Natural Resources, Mines and Energy (DNRME), correspondence dated 3 April 2018, p 4.

15 Submission 8, pp 1-2.

16 Public hearing transcript, Brisbane, 23 April 2018, p 6.

Committee comment

The committee has noted concerns raised by the former committee about a lack of stakeholder consultation on the 2017 Bill. This committee noted that stakeholders raised similar concerns in relation to the 2018 Bill and is of the view that the department should consult with all relevant mining industry stakeholders before bills are introduced into the Legislative Assembly.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views, and information provided by the department, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Mines Legislation (Resources Safety) Amendment Bill 2018 be passed.

2 Examination of the Bill

The following sections outline the committee's examination of the 2018 Bill.

2.1 Ventilation officer competencies and absences

The Bill proposes to strengthen the qualification requirements for the role of ventilation officer at underground coal mines so that people with appropriate experience, expertise and understanding of their statutory obligations are employed in the role. Clause 17 of the Bill proposes to replace section 61 of the CMSHA to require the underground coal mine manager to appoint a ventilation officer for an underground mine and also requires that:

- only a person holding a certificate of competency for ventilation officers granted by the Board of Examiners can be appointed to the role of ventilation officer
- the ventilation officer is responsible for implementation of the mine's ventilation system and the establishment of effective standards of ventilation for the mine, and
- the underground mine manager must not appoint an individual as the ventilation officer for more than one underground mine, unless the chief inspector is satisfied the person can effectively carry out the duties at the mines.[17]

In response to a question from the committee at the public briefing, the department advised:

> *The first point is that we have people with qualifications in the industry doing the role now. This added impost is to require those people who are presently doing the job to do a law exam and an oral. It is basically validating the knowledge and experience of those people who are operating in the industry now. It is setting the benchmark for those people who are going to undertake the role in the future as to what is expected. We hope and think that the people presently doing the role in the industry now are more than capable of passing the written and orals that are required of them.*[18]

The department also advised that in response to feedback from the CMSHAC, the 2018 Bill has been amended to ensure that:

- only underground coal mine managers can appoint a ventilation officer and that underground coal mine managers can only fulfil the role of ventilation officer if they have a ventilation officer certificate of competency, and
- the SSE will not be able to appoint the underground mine manager as the ventilation officer.[19]

The 2017 Bill provided a discretion for the chief inspector to extend the three-year transitional period for current ventilation officers at underground coal mines to obtain a certificate of competency, with the provisions relating to certificates of competency for ventilation officers to commence on assent. The department advised that following feedback from CMSHAC this discretion has been removed, as the three-year period is considered to be sufficient. The commencement of sections 61 and 61A and the transitional provisions will also be delayed through proclamation to allow time for the examination/competency testing process to be established by the Board of Examiners (estimated to be no later than September 2018).[20]

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17 Explanatory notes, pp 28-29.

18 Public briefing transcript, Brisbane, 12 April 2018, p 8.

19 DNRME, correspondence dated 3 April 2018, p 4.

20 DNRME, correspondence dated 3 April 2018, p 6.

The 2018 Bill also differs from the 2017 Bill in that the drafting clarifies that an underground coal mine can have more than one ventilation officer, if operations at the mine require more than one ventilation officer (proposed section 61(6)).[21]

A number of submitters supported the amendments in regard to ventilation officers. The Mine Managers Association of Australia (MMAA) advised the committee:

> *We are fully supportive of the amendment requiring a practical examination to gain certification as a ventilation officer. Whilst the existing prerequisite modules provide excellent technical instruction for aspiring ventilation officers there have been a number of examples, some of which had the potential to be catastrophic, where the individuals that were deemed competent were unable to translate their technical knowledge to a practical setting in compliance with the Regulation.*[22]

Together Queensland Industrial Union of Employees (Together) and the CFMEU also expressed support for the proposed changes in their respective submissions.[23] The Australian Workers' Union (AWU) also indicated it supported the proposal at the public hearing in Mount Isa.[24]

While Together supported the proposed changes it submitted that 'current employees should not be disadvantaged or displaced in their current permanent positions, rather supported through training and mentoring to meet desired competencies'.[25] The department responded by advising:

> *The proposed amendments apply to ventilation officers at mines and mine operators have obligations under the legislation to ensure that their safety critical workers are adequately trained and competent. The intent of the amendments is to ensure that ventilation officers are competent as they are in safety critical roles at mines. Ventilation officers at mines will have a three year transitional period within which to demonstrate their competencies.*[26]

The QRC submission noted that it had not previously supported additional statutory positions in relation to ventilation officers, nor the additional certification requirements; but given the improved understanding of the actual level of risk of respiratory diseases from respirable mine dust, it did support this proposal in the Bill.[27] The QRC also advised that it supported the 2018 Bill's revised provisions regarding the transitional period for the new requirements.[28]

Mine Ventilation Australia (MVA) fully supported the reintroduction of the statutory position of ventilation officers in non-coal mines, but noted that the success of this will depend in large measure on the requirements set by the advisory committee and the Board of Examiners. However, MVA submitted that it preferred the approach in the coal ventilation amendments, where the ventilation officer is subject to the direction and control of the underground mine manager.[29]

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21 DNRME, correspondence dated 3 April 2018, p 4.

22 Submission 1, p 3.

23 Submission 4, p 1 and submission 6, p 8.

24 Public hearing transcript, Mount Isa, 18 April 2018, p 10.

25 Submission 4, p 1.

26 DNRME, correspondence dated 20 April 2018, p 3.

27 Submission 8, Appendix A, p 8.

28 Public hearing transcript, Moranbah, 19 April 2018, p 2.

29 Submission 2, p 1.

The department noted MVA's comments and advised:

> *The different approach to the metals ventilation officer appointment acknowledges that there may need to be some flexibility in how the mine's structure works, with a ventilation officer perhaps also participating in the planning management area of a mine. If the ventilation officer is underground in a metals mine, the ventilation officer is subject to the control and management of the underground mine manager as current section 53(1) states that the underground mine manager is appointed to control and manage an underground mine.*[30]

Clause 17 also proposes to insert a new section 61A in the CMSHA that provides for how the underground mine manager should deal with the temporary absence of a ventilation officer appointed for a mine. Sections 61A(2) and (3) provide that where the period of absence is seven days or less, the duties and responsibilities of the ventilation officer can be undertaken by the underground mine manager if the underground mine manager holds a ventilation officer's certificate of competency. Where the period of absence of the appointed officer is more than seven days, sections 61A(3) and (4) require the underground mine manager to appoint another person holding a ventilation officer's certificate of competency as ventilation officer for the mine.[31]

The QRC suggested that the proposed requirement for an alternate ventilation officer to be appointed if the ventilation officer is away for more than seven days, should be extended to 14 days:

> *Seven days seems too short a timeframe, and would effectively require every mine to engage two qualified VOs [ventilation officers] on a permanent basis. This has the potential to become a bottleneck if there are not enough qualified VOs, and it would also impose an unjustifiable additional cost on mine operators. The QRC suggests that 14 days would be a more sustainable and reasonable requirement.*[32]

At the Moranbah public hearing, the QRC further elaborated that this was one of the issues that was discussed by the advisory committee:

> *They did discuss that and teased out that the issue is not so much about the length of that period but understanding what the obligations are in terms of whether or not a person is available to do something. A number of issues that can be dealt with do not actually need a person to attend the mine; it is giving advice based on their experience and qualifications. What was being thought about was defining what being in attendance at a mine actually means. We suggest also that that might be considered as an improvement to the bill. If we could take that approach rather than worry about whether it is seven days or 14 days, but just define exactly what the issue is—that is, that the person is uncontactable to provide the service that they would normally provide to the mine.*[33]

In response to the concern raised in the QRC submission, the department advised:

> *The proposed 7 day timeframe for the appointment of a replacement ventilation officer (i.e. when the ventilation officer for an underground coal mine is absent) is justifiable considering the importance of the role for an underground coal mine.*[34]

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30 DNRME, correspondence dated 20 April 2018, p 3.

31 Explanatory notes, p 29.

32 Submission 8, Attachment A, p 8.

33 Public hearing transcript, Moranbah, 19 April 2018, p 4.

34 DNRME, correspondence dated 20 April 2018, p 2.

The QRC also noted that the CMSHAC had resolved that the Bill should include definitions of the terms 'temporarily absent from duty' and 'not in attendance' to support the intention of these sections.[35] The department advised:

> *The definitions of "temporarily absent" or "not in attendance" are not included among the changes in the 2018 bill due to unforeseen drafting complexities and the need for further consultation about what these definitions are to mean. Due to the short turnaround for the re-introduction of the bill, it was not possible to finalise the definitions for inclusion in the 2018 bill.*[36]

While the CFMEU supported clause 17 in its submission,[37] it advised the committee at the Brisbane public hearing that seven days is too long a timeframe and that an alternate ventilation officer should be present from the time the appointed officer is absent.[38]

In relation to MQSHA, clause 65 proposes to insert new sections 54A and 54B to enhance the qualification requirements for ventilation officers. The new section 54A sets up a framework for a ventilation officer to be appointed by the SSE for underground mines based on the number of workers (unless prescribed under the regulation). The clause also inserts a new section 54B to deal with the temporary absence of a ventilation officer appointed for a mine. Where the absence is 14 days or less, the duties and responsibilities of the ventilation officer are taken to be assumed by the underground mine manager whether or not the underground mine manager has a ventilation officer competency.

MVA concurred with this differential treatment of ventilation officer replacements between the CMSHA and MQSHA based on the different risk profile of each industry, noting: 'This is probably sensible given the different nature and risks of the two industries'.[39]

However, MVA did emphasise that this difference was in relation to 'acute' problems rather than 'chronic' problems in both industries:

> *… I would point out that while the 'acute' problems of poor ventilation are likely to be more serious in coal mines (especially methane explosion), the 'chronic' problems of poor ventilation are likely to have a similar risk profile in both industries (coal workers or silica pneumoconiosis, lead and toxic metals).*[40]

Committee comment

The committee was satisfied that the proposed new sections relating to ventilation officer competencies, and the arrangements to be put in place during absences of ventilation officers, are appropriate for coal and non-coal mines given the relative risks of the two industries.

2.2 Inspector powers including workplace entry

Clause 23 of the Bill proposes to amend section 133 of the CMSHA to provide a power to enter workplaces, including off mine site workplaces, by adopting a similar approach to that used under the *Work Health and Safety Act 2011* (WHS Act) for entry to places.[41] It is proposed that the inspectors will be able to enter any place that is, or the inspector reasonably suspects is, a workplace without permission or requiring a warrant (proposed sections 133(1)(e) and 133(3)).

Clause 70 proposes the same amendments to section 130 of the MQSHA.

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35 Submission 8, Appendix B, p 2.

36 DNRME, correspondence dated 20 April 2018, p 2.

37 Submission 6, p 8.

38 Public hearing transcript, Brisbane, 23 April 2018, p 12.

39 Submission 2, p 1.

40 Submission 2, pp 1-2.

41 Explanatory notes, p 2.

The explanatory notes advised that the existing workplace entry powers under the CMSHA and MQSHA are reasonably broad, applying (with some limitations) to mines and quarries as well as to workplaces (as defined under the WHS Act) and public places,[42] and provided the following justification for the extension of entry powers:

> *Currently inspectors can enter mine sites but there are legislative gaps in respect to entering some off-mine site workplaces, where activities affecting the safety and health of mine workers may still be carried out.*
>
> *Entry to off-mine site workplaces is sometimes required when the activities at that workplace are relevant to mining. An example is an electrical overhaul workshop conducting maintenance on explosion protected electrical equipment to be reinstalled in an underground coal mine following maintenance.*[43]

Clause 24 of the Bill proposes to insert new section 138A which places limitations on entry powers of inspectors to places where the place may also be used for residential purposes. These limitations do not apply if the place is a coal mine.[44] Clause 71 proposes to insert the same provision as a new section 135A in the MQSHA.

Stakeholder feedback on the wording of proposed new section 138A CMSHA and new section 135A MQSHA in the 2017 Bill raised concerns that the drafting of the new sections would limit the current powers of an inspector to enter mining accommodation camps within the boundaries of a mining lease which are under the control of an SSE and operator.[45] The department advised

> *Such mining accommodation camps are used as mine workers' residence when workers are off-shift but still on site (e.g. used as accommodation for fly-in fly-out workers). Mining accommodation camps are currently accessible by an inspector as such a camp is part of the coal or metals mine.*[46]

The 2018 Bill has been amended to clarify that an inspector can enter any part of a mining lease, including mining accommodation camps and other facilities used for residential purposes.[47]

The CFMEU submission indicated that the amendments to the 2018 Bill have remedied its concerns about these provisions in the 2017 Bill.[48]

Together supported the expanded powers of right of entry for inspectors, but recommended that if these expanded powers cause an increase in workloads, a commensurate increase in resourcing be provided.[49] In response, the department advised that the amendments will not create an additional workload or a need for additional resources as the amendments only clarify the current rights of inspectors to off-site workplaces when these off-site workplaces are potentially affecting safety and health at the mine.[50]

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42 Explanatory notes, p 7.

43 Explanatory notes, p 7.

44 Explanatory notes, p 31.

45 DNRME, correspondence dated 3 April 2018, p 5.

46 DNRME, correspondence dated 3 April 2018, p 5.

47 DNRME, correspondence dated 3 April 2018, p 5.

48 Submission 6, p 8.

49 Submission 4, p 1.

50 DNRME, correspondence dated 3 April 2018, p 4.

The MMAA supported the principle of mines inspectors having the same rights of entry as a Workplace Health and Safety Inspector into a workplace given that their right of entry is limited by the object of the Acts and the functions of a mines inspector, and provided the following example:

> *We are aware of instances where mining equipment repair workshops have been less than diligent in their repair and overhaul of mining equipment and particularly where that specifically relates to flame proof and intrinsically safe electrical equipment and flame proofing of diesel equipment. It is critical that appropriately trained inspectors can enter such premises to determine the appropriate standards of overhaul and repair are being strictly adhered to as any shortcomings could lead to a unacceptable hazard when the said equipment is returned to service.*[51]

The QRC was unconvinced that this amendment is required, but indicated:

> *However, the QRC also accepts that, given the off-mine places being discussed would not be clearly linked to the mining operation, their entry by the Mines Inspectorate is likely not to be a matter of particular concern to mining operators. Given the sites being discussed would normally be regulated by Workplace Health and Safety Qld there is as much potential for this proposal to increase jurisdictional uncertainty as there is for it to improve the enforcement of mining safety obligations. The QRC therefore expects that the two safety regulators would have explored this issue at length before proceeding with this change, and that both Ministers are comfortable with how it will operate in practice should it ever be required.*[52]

In relation to the QRC's concern about jurisdictional uncertainty, the department advised that the provisions do not create jurisdictional uncertainty as they only provide entry for officers performing functions under the CMSHA and MQSHA.[53]

The power of entry provisions are also examined in section 3.1.1.5 of this report – Compliance with the *Legislative Standards Act 1992*.

Committee comment

The committee was satisfied that the proposed amended and new sections relating to powers of entry simply clarify the current rights of inspectors to enter off-site workplaces when these off-site workplaces are potentially affecting safety and health at the mine. The committee also noted that stakeholders are satisfied that the amendments made to the 2018 Bill, in response to stakeholder concerns with the drafting of the 2017 Bill, meet their concerns.

2.3 Manufacturer, supplier, designer and importer notification requirements

Clauses 10 and 11 of the Bill propose to amend sections 44 and 46 of the CMSHA to insert the following requirements:

- if a designer, manufacturer, importer or supplier of plant etc. for use in a coal mine or a manufacturer, importer or supplier of a substance becomes aware of a hazard or defect associated with the plant or substance, that may create an unacceptable level of risk to users of the substance, they must inform the chief inspector of the nature of the hazard or defect and its significance, and any modifications or controls of which the manufacturer, importer or supplier is aware that have been developed to eliminate or correct the hazard or defect or manage the risk
- the designer, manufacturer, importer or supplier must inform the chief inspector of the name of each coal mine operator, contractor or service provider the plant or substance was supplied

[51] Submission 1, p 3.

[52] Submission 8, attachment A, pp 9-10.

[53] DNRME, correspondence dated 3 April 2018, p 4.

to and what steps have been taken to notify them of the hazard or defect associated with substance, and

- a supplier of the plant or substance must notify the mine operator, contractor or service provider of any hazard or defect in the use of the substance and any corrective actions to address the hazard or defect.[54]

Clause 58 and 59 propose to amend sections 41 and 43 of the MQSHA to insert the same requirements.

The explanatory notes advised that these amendments are in response to a Queensland Coroner recommendation and to ensure consistency across Queensland's mining safety and health legislation.[55]

The submissions from the MMAA, Together, and the QRC all supported these proposed new requirements:

- the MMAA submitted that it is vital that operators are fully aware of any hazards or defects that may be present in the supplied plant or substance such that risk mitigation procedures can be enacted at the earliest possible time[56]
- Together noted that the proposed obligations are likely to improve the day-to-day lives of workers,[57] and
- the QRC noted that the proposed amendment can only support the provision of important safety information to the people that could be affected by defects associated with mining plant or by otherwise unknown hazards that are associated with substances used in mining.[58]

The QRC also advised:

> *The QRC believes that this proposal highlights that harmonised safety and health legislation should be more widely considered, as these issues appear to be better dealt with under the WH&S Act. This includes provision for multiple duties under the "PCBU" model and for each 'high risk' activity to have strong controls and lines of accountability that is applicable to that activity.*[59]

2.4 Contractor and service provider management

The Bill proposes to improve contractor and service provider safety and health at mines sites by requiring contractors and service providers to provide their safety and health management information to be considered as part of a single, integrated SHMS for all mine workers.[60]

Clauses 9 and 12 of the Bill propose to replace sections 43 and 47 of the CMSHA to place obligations on contractors and service providers respectively, to work with the SSE to ensure their safety and health management plans are integrated with the mine's single SHMS. In relation to the MQSHA, clause 57 and clause 60 propose to replace sections 40 and 44 to place similar obligations on contractors and service providers.[61]

Clauses 8 and 56 of the Bill propose to amend section 42 of the CMSHA and section 240 of the MQSHA to place additional obligations on the SSE to give a contractor or service provider information about

54 Explanatory notes, pp 26-27.

55 Explanatory notes, p 2.

56 Submission 1, p 3.

57 Submission 4, p 1.

58 Submission 8, Attachment A, p 10.

59 Submission 8, Attachment A, p 10.

60 Explanatory notes, p 8.

61 Explanatory notes pp 26-27 and pp 40-41.

components of the mine's SHMS required to identify risks and comply with their obligations to integrate their procedures into the mine's SHMS.[62]

The department advised the committee at the public briefing:

> *The new provisions will provide that the SSE, the site senior executive, must effectively have a dialogue with the contractor to ensure that both of them are working together, so the SSE's responsibility is to ensure that the contractor's procedures work in with the safety and health management system and provides them with sufficient information to undertake a risk assessment and properly assess and manage the risk there. Ultimately that safety and health management system will be the one instrument that prevails, but still both the site senior executive and the contractor have joint responsibilities to make sure that happens.*[63]

Submissions from Cement, Concrete and Aggregates Australia (CCAA), Together and the MMAA were supportive of the proposed amendments. In particular, these organisations referred positively to the requirement for contractors and service providers to provide their safety and health management plan to the SSE for consideration and integration into the SHMS system for the mine.[64]

At the Moranbah public hearing, the MMAA made the following additional comment:

> *In relation to contractor and service provider management, in our opinion it is concerning that it has required another amendment to make it incontrovertibly clear that there will be a single safety and health management plan on a mine site. The example utilised in the explanatory notes to explain how a single safety and health management system can be achieved has been around for some time and it is regretful that it had to be utilised again.*[65]

The QRC supported the intention of the proposed amendments but was concerned that the approach may be ineffective in achieving the objective of a single, integrated SHMS for all mine workers. It suggested that the effectiveness of the amendments could be reviewed at a later date through the tripartite advisory committee process.[66] The department noted the QRC's views, 'but did not accept the suggestion that the provision is inadequate'.[67]

The QRC was also concerned that the Bill placed an undue emphasis on major contractors and called for a definition of 'contractor'.[68] The QRC advised the committee at the public hearing in Moranbah that while the advisory committee had agreed unanimously that the Bill would benefit from a definition of the terms 'contractor' and 'service provider', no definition of 'contractor' had been drafted in the Bill. The QRC noted that the term 'service provider' is defined in clause 12 of the Bill (section 47 of the CMSHA) as a person that provides a service but that the QRC is unsure whether that clarified the issue.[69] The QRC explained:

> *Our understanding is that the advisory committee wanted to ensure that the appropriate range of people was captured by these obligations. From the perspective of not imposing an unreasonable regulatory burden, the QRC would not want to see those obligations applied to*

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62 Explanatory notes p 24 and p 38.

63 Public briefing transcript, 12 April 2018, p 4.

64 Submission 5, p 3, submission 4, p 1 and submission 1, p 3.

65 Public hearing transcript, Moranbah, 19 April 2018, p 9.

66 Submission 8, Attachment A, pp 10-11.

67 DNRME, correspondence dated 20 April 2018, p 5.

68 Submission 8, Attachment A, pp 10-11.

69 Public hearing transcript, Moranbah, 19 April 2018, p 3.

> *service providers and contractors who do not undertake activities that would affect the safety and health of coalmine workers. We suggest that defining these terms would help ensure that.*[70]

In responding to the QRC submission, the department agreed that 'the definition of contractor requires further consideration and consultation, prior to possible inclusion in a subsequent bill'.[71]

The Bill's clause 16 (proposing to amend section 55 of the CMSHA) and clause 64 (proposing to amend section 50 of the MQSHA) also require the management structure to include the name of the person who is responsible for establishing and implementing the system for managing contractors and service providers in a safe manner.[72]

The CFMEU recommended in 2017, and again in 2018, extending the amendment in clause 16 to also name the persons who have roles or responsibilities relating to any of the obligations of the SSE:

> *Currently there are persons such as the Safety and Health Manager, Contract Manager, Training Manager who all are responsible for varying parts of the SHMS on behalf of the SSE.*[73]

The department disagreed with the CFMEU's recommendation on the basis that further prescription may restrict an SSE from implementing a management structure that best addresses the identified risks at a specific mine:

> *Consistent with the risk-based approach of the mining safety and health legislation, the department considers that there should be sufficient flexibility for SSEs to develop management structures that best achieve an acceptable level of risk for their particular mine. The proposal that further prescription be included as to the contents of a mine's management structure may restrict an SSE from implementing a structure that best addresses the risks that have been assessed to be present at, and particular to, a specific mine.*
>
> *If a standard is to be set for management structures, it is considered that this is better achieved through the creation of a recognised standard, rather than through prescription in the Act. A recognised standard would still allow for mines to implement different measures to those stated in the recognised standard, if those measures achieve a level of risk that is equal to or better than the acceptable level.*[74]

Committee comment

The committee noted the concerns raised by stakeholders in relation to the effectiveness of the proposed amendments in achieving a single, integrated SHMS for all mine workers and the need for a definition of 'contractor'.

Recommendation 2

The committee recommends that the Bill be amended to include a definition of 'contractor'.

70 Public hearing transcript, Moranbah, 19 April 2018, p 3.

71 DNRME, correspondence dated 20 April 2018, p 5.

72 Explanatory notes p 28 and p 42.

73 Submission 6, p 6.

74 DNRME, correspondence dated 20 April 2018, p 5.

2.5 Advisory committees and Board of Examiners membership

2.5.1 Advisory committees

The explanatory notes advised:

- CMSHAC and its partner Mining Safety and Health Advisory Committee (MSHAC) each consist of nine members, one of whom is the chairperson
- the chairperson of each committee is the Commissioner for Mine Safety and Health
- other than the Commissioner, each committee has three members representing industry workers, three representing mine operators and two members from the mines inspectorate, and
- historically, the person appointed to the role of Commissioner for Mine Safety and Health was also a departmental employee, meaning equal tripartite representation across each committee.[75]

Following the appointment of an independent Commissioner in 2016, there is no longer an equal number of departmental representatives compared with mine operator and worker representatives on the committees.[76]

Clauses 21 and 22 of the Bill proposes to amend section 78 and 80 of the CMSHA to increase the number of departmental (mines inspectorate) members of the CMSHAC from two to three members. This will bring the total number of members to 10 persons (including the Commissioner). Clause 67 proposes to amend section 69 of the MQSHA to increase the number of members of the MSHAC to 10 members also.

The explanatory notes advised that in relation to the appointment processes, currently all persons appointed as members of statutory bodies under the CMSHA and MQSHA are appointed as individuals, rather than by position and:

> *The current approach is administratively burdensome in relation to departmental employees in the event of resignations or extended periods of absence and is inconsistent with recommendations of the "Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities" that appointments be by position where possible.*
>
> *This issue can be overcome if the CMSHA and MQSHA are amended to provide that departmental appointments be to specific positions where possible. Two of the inspector appointments to the Board of Examiners can be by position (i.e. the chief inspector of coal mines and the chief inspector of mines) rather than by name of the individuals appointed to those positions.*[77]

The QRC supported this amendment given the change in the role of the Commissioner:

> *This amendment recognises that the Commissioner is now more independent of the Mines Inspectorate and should not be "counted" as an Inspectorate representative. QRC has supported the independence of the Commissioner, and therefore supports the proposal.*[78]

CCAA supported the proposed inclusion of an additional mines inspectorate representative on MSHAC and advised that 'it is vital that the representation on MSHAC includes continued representation from the quarrying sector, whose operations are quite distinct from other parts of the mining industry'.[79] The department responded by advising that there is to be no change to section 71(2) of the MQSHA,

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75 Explanatory notes, p 9.

76 Explanatory notes, p 30.

77 Explanatory notes, p 9.

78 Submission 8 Attachment A, p 11.

79 Submission 5, p 2.

which already ensures that 'one of the persons appointed from the panel submitted by organisations representing operators must represent quarry operators'.[80]

The 2017 Bill proposed that the Minister have discretionary power under both Acts to appoint a person from a panel even if the person does not have the required 'coal mining operations' experience. Stakeholder feedback to the former parliamentary committee raised concerns that the proposed amendment could result in persons being appointed as members of the CMSHAC who do not have coal mining experience.[81] In response to these stakeholder concerns clause 21 (proposed amendment to section 78 of the CMSHA) has been amended so that the 2018 Bill maintains existing requirements.[82] The department advised:

> *The proposal was removed for the coal mining legislation as some stakeholders were of the view that there was no justification for the proposal and that there are no impediments to appointing suitably qualified members.*[83]

Section 71(5) of the MQSHA currently enables the Minister to appoint a person who represents mine operators or workers only if the person is experienced in 'mining operations' (which has a defined meaning under the Act).[84] Clause 68 of the Bill proposes to amend section 71 of the MQSHA to provide the Minister with the discretionary power to appoint a member even if the person does not have mining operations experience 'as long as the Minister considers the person appropriate to be a member of the committee'. The explanatory notes provided the following justification:

> *While this experience is highly regarded, at times proposed representatives for appointment will not be able to meet the experiential requirement. This has arisen for worker representatives proposed for appointment to the mining safety and health advisory committee under section 71 of the MQSHA.*[85]

The QRC advised the committee at the Moranbah public hearing that when QRC members considered this proposal, some of them highlighted the fact that potentially expanding the experience of the committee could be of benefit to both committees:

> *They raised the example, particularly for the coal advisory committee, that they may have benefited from some occupational health experience when they were dealing with coal workers' pneumoconiosis. While the QRC believes that the principle of ensuring that the advisory committees have enough practical experience is important, we did support that proposal in principle, provided the committees would retain adequate practical mining experience and remain effective. Now this proposal has actually been dropped from the bill. We do wonder whether the issue regarding the mining advisory committee has been addressed and suggest that the question of broader experience is still relevant.*[86]

The department advised that the committees can seek specialist input from specialist experts as required including about health or hygiene issues, and it would be possible for specialist experts to be nominated for membership of either or both committees, provided they satisfy the criteria of breadth of experience in the coal mining industry; demonstrated commitment to promoting safety and health

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80 DNRME, correspondence dated 20 April 2018, p 6.

81 IPNRC, *Report No 57, 55th Parliament, Mines Legislation (Resources Safety) Amendment Bill 2017*, October 2017, pp 9-11.

82 DNRME, correspondence dated 3 April 2018, p 5.

83 DNRME, correspondence dated 19 April 2018, p 6.

84 Explanatory notes, p 3.

85 Explanatory notes, p 9.

86 Public hearing transcript, Moranbah, 19 April 2018, p 3.

standards in the coal mining industry and practical knowledge of the industry and of relevant legislation.[87]

The MMAA submission advised that it acknowledged and understood the potential discretionary power relating to the MSHAC while reaffirming that this discretionary power should never apply to the CMSHAC.[88] The MMAA submission also recommended that 'at least one of the operator representatives be a practicing underground mine manager or SSE with a first class mine manager's certificate of competency' as 'any decisions made by the Committee will eventually have to be instituted by those at the "coal face" and their practical input for the appropriateness and practicality of any recommendation or decision is critical'.[89] The department responded by advising that the current approach is retained for the CMSHAC.[90]

The CFMEU indicated that the amendments to the 2018 Bill address its concerns about the approach proposed in the 2017 Bill. However, the CFMEU made an additional suggestion:

> *While making changes to Part 6 it would be sensible to insert a section for replacement of persons who leave /resign from the Committee. Currently one replacement would appear to require a list of another 6 names be put to the Minister.*[91]

The department noted the CFMEU's 'continuing suggestion about further streamlining the appointment of replacements on the Committee'.[92]

Committee comment

The committee noted the advice from a number of stakeholders that the amendments made to the 2018 Bill satisfy their concerns with the proposed amendments in the 2017 Bill, which could have resulted in persons being appointed as members of the CMSHAC who did not have coal mining experience.

The committee also noted the advice from the QRC that some of its members preferred the amendments proposed in the 2017 Bill on the basis that potentially expanding the experience of the committee could be of benefit to both committees, and the department's advice that committees can seek specialist input as required including about health and hygiene issues.

2.5.2 Board of Examiners membership

Clause 27 proposes to amend section 186 of the CMSHA to provide that a chief inspector (under the CMSHA) and the chief inspector of mines (under the MQSHA) are members of the Board of Examiners, making them standing members.[93] The explanatory notes advised:

> *In practice, the two chief inspectors are always appointed as a members of the Board of Examiners, so this change confirms contemporary practice. The need for this amendment has arisen because all persons currently appointed as members of the Board of Examiners under the CMSHA are appointed as individuals, rather than by position. The current approach is administratively burdensome in relation to departmental employees (i.e. inspectors) in the event of resignations or extended periods of absence and is inconsistent with recommendations of the*

87 DNRME, correspondence dated 20 April 2018, p 8.

88 Submission 1, p 4.

89 Submission 1, p 4.

90 DNRME, correspondence dated 20 April 2018, p 6.

91 Submission 6, p 8.

92 DNRME, correspondence dated 20 April 2018, p 6.

93 Explanatory notes, p 31.

> *"Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities" that appointments be by position where possible.*[94]

A number of submissions to the 2017 committee inquiry raised concerns that the proposed amendment appointing chief inspectors by position fails to ensure the appointed chief inspector holds the corresponding certificate of competency. The IPNRC recommended that the 2017 Bill include a requirement that, as a minimum, the chief inspector should hold a first class certificate of competency for the type of mining for which they are chief inspector.[95]

While the IPNRC recommendation was not adopted, the 2018 Bill has been amended to propose that section 186(4) of the CMSHA require that at least one member must be an inspector member who holds a first class certificate of competency for an underground coal mine; and at least one member must be an inspector who holds a first class certificate of competency for an underground mine under the MQSHA.[96]

At the public briefing on the Bill, the department responded to a question from the committee as to why the decision was made not to require chief inspectors to hold a corresponding certificate of competency by advising:

> *There are two issues here in that the provisions in the bill are concerned with membership of the Board of Examiners. They are not concerned with the qualifications of the chief inspectors. Matters relating to the qualifications of the chief inspectors of each Act are outside the scope of this bill. As it happens, the chief inspector of both coal and mineral mines and quarries both hold first-class certificates in coalmining. I guess the short answer is that the qualifications of the chief inspectors were never the subject of this bill. It is simply the qualification of the membership of the Board of Examiners that is dealt with in this bill.*[97]

The CFMEU opposed the provisions of the 2017 Bill and continued to oppose proposed amendments in clause 27 of the 2018 Bill (proposed amendment to section 186 of the CMSHA). The CFMEU recommended that chief inspectors should hold at a minimum a first class certificate of competency in the type of mining for which they are chief inspector. Its submission also argued that the proposed amendment does not allow for an inspector to hold other types of certificate of competency and that as there is no maximum number of inspectors on the Board this 'may allow for the department to control board actions'.[98]

The department responded by advising:

> *… the department does not consider that the Act need require that the chief inspector hold a first-class certificate of competency that corresponds to the type of mining their appointment relates to. The changes also allow for inspectors with other certificates of competency to be appointed to the Board of Examiners, as the upper limit of 3 inspectors is removed to be consistent with the current no upper limit on representatives from industry or unions.*
>
> *The current provisions do not place an upper limit on the number of members on the Board of Examiners who are from industry or from unions. The current provisions only limit the number of inspectors on the Board of Examiners to 3 which unnecessarily restricts administrative flexibility and the ability to respond to changes in workload of the Board of Examiners.*

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94 Explanatory notes, p 31.

95 IPNRC, *Report No 57, 55th Parliament, Mines Legislation (Resources Safety) Amendment Bill 2017*, October 2017, p 11.

96 Explanatory notes, p. 32.

97 Public briefing transcript, Brisbane, 12 April 2018, p 4.

98 Submission 6, p 9.

Appointments to the Board of Examiners are significant appointments and are scrutinised through responsible government and Cabinet processes.[99]

The MMAA fully supported the amendments to include position titles rather than specific names for inspectorate members. However, the MMAA proposed:

… all Board members should have as a minimum a statutory qualification, ideally there should also be a minimum of one academic who has current knowledge of the content of a degree qualification in mining from various universities (ideally this individual would also be statutorily qualified, if not an exemption could be made).

At this time we do not believe that individuals with only the SSE qualification qualify under our proposal as the SSE qualification only entails knowledge of the legislation and does not require technical knowledge of how to extract the commodity whilst controlling hazards and in an efficacious manner.[100]

The department responded by advising that the MMAA's proposal to legislate for other matters regarding membership of the Board would need further clarification and consideration.[101]

The QRC submission noted that the amendment is consistent with a CMSHAC resolution, and advised that the QRC supported the change in the 2018 Bill.[102]

2.6 Safety and health management system requirements

The CMSHA and MQSHA contain provisions outlining the requirements for an SHMS, including recognising the SHMS as a key mechanism through which the objects of the Acts are to be achieved,[103] and identifying the matters which should be included in the SHMS to be effective in achieving an acceptable level of risk.[104]

Section 39 of the MQSHA currently exempts an SSE at a mine with 10 or less workers, from the requirement to develop and implement an SHMS for all persons. Clause 56 of the Bill proposes to amend section 39 to limit the exemption so that it applies only to opal or gem mines with four or less workers. The explanatory notes advised that this aims to 'reduce fatalities and to improve the safety and health in small mines … The Mines Inspectorate will instead continue to provide education and guidance about risk management for opal or gem mines with four or fewer workers'.[105] The 2017 Bill proposed to remove the exemption for opal or gem mines. However, this was amended following consultation with industry in February 2018 so that the 2018 Bill lowers the threshold.[106]

Clauses 18 and 66 of the Bill propose amendments to the CMSHA (section 62) and MQSHA (section 55), to clarify requirements and application of the SHMS.

Stakeholder feedback on the proposed amendments in the 2017 Bill raised concerns that the wording of amendments to section 62(2) of the CMSHA and section 55(2) of the MQSHA (regarding what is necessary to constitute an effective SHMS) was ambiguous, and suggested the provisions be

99 DNRME, correspondence dated 20 April 2018, p 7.

100 Submission 1, p 4.

101 DNRME, correspondence dated 20 April 2018, p 6.

102 Submission 8, Appendix B, p 3.

103 *Coal Mining Safety and Health Act 1999* (CMSHA), s 7(b); *Mining and Quarrying Safety and Health Act 1999* (MQSHA), s 7(b).

104 CMSHA s 62(3); MQSHA, s 55(3).

105 Explanatory notes, p 10.

106 DNRME, correspondence dated 3 April 2018, p 6.

redrafted.[107] The department advised that the 2018 Bill has been amended to further clarify the relevant sections and reflect:

> *… that the* organisational *structure, planning activities, responsibilities, practices, procedures and resources for developing, implementing, maintaining and reviewing a safety and health policy form part of the safety and health management system and are not separate to the safety and health management system, as a separate part of the overall management system.*[108]

The CFMEU made further suggestions in relation to the proposed amendments to section 62(2) of the CMSHA in the 2018 Bill, calling for the section to be further amended to clarify that 'reports such as investigations, maintenance documents etc. do form part of the SHMS'.[109] The department noted the request for further consideration.[110]

The MMAA supported the proposed amendments.[111] The QRC supported them while also suggesting a more comprehensive review of the SHMS.[112] The department responded:

> *The requirement for a 'more comprehensive safety and health management system review' is a matter that would be appropriate for discussion at the Coal Mining Safety and Health Advisory Committee. Nonetheless, the proposed amendments are an immediate priority to ensure that there is a single safety and health management system (SHMS) for a mine. This will ensure that all contractors, service providers and workers at a mine site will be aware of risks and controls associated with specialised work of contractors and service providers as well as the broader requirements under the overarching, single integrated SHMS developed and implemented by the mine's site senior executive.*[113]

2.7 Register to be kept by Board of Examiners

The Bill proposes amendments be made to the CMSHA and MQSHA to allow the Board of Examiners to keep a register of certificates of competency, SSE notices and notices of registration given by the board under the *Mutual Recognition Act 1992* (Cth).

Any agency, mine operator or other person currently seeking to confirm that a person is the holder of a valid certificate or notice requires either the consent of the holder or alternatively may request access to the information under the *Right to Information Act 2009*. According to the explanatory notes, this situation is creating an unnecessary administrative burden and detracts from promoting transparency in the mining industry.[114]

Clauses 29 and 76 of the Bill propose to insert new section 193A in the CMSHA and new section 185 in the MQSHA to provide for the Board of Examiners to keep a register of holders of certificates of competency, SSE notices and notices of registration given by the board under a mutual recognition Act. The register will include the name and contact details of the holder, details of the certificate or notice, and the status of the certificate or notice. Amendments will be made to the CMSHA and MQSHA to provide that the information contained in the register, other than the contact details of the holder,

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107 DNRME, correspondence dated 20 April 2018, p 9; DNRME, correspondence dated 3 April 2018, p 4.

108 DNRME, correspondence dated 3 April 2018, pp 4-5.

109 Submission 6, p 8.

110 DNRME, correspondence dated 20 April 2018, p 9.

111 Submission 1, p 6 and public hearing transcript, Moranbah, 19 April 2018, p 10.

112 Submission 8, Appendix B, p 12.

113 DNRME, correspondence dated 20 April 2018, p 9.

114 Explanatory notes, p 10.

may be made available. This will enable persons, such as mine operators or SSEs, to determine if a person holds a valid certificate or notice.[115]

The submissions from the MMAA, the QRC and the Together supported the proposed amendments.[116]

At the Moranbah public hearing, the MMAA advised the committee:

> *We are totally supportive of the amendment relating to the Board of Examiners register. It will greatly assist operators in ensuring job applicants are duly qualified for the position applied for. In terms of health surveillance, we recognise the need for a health assessment regime similar to that which prevails in the Coal Mining Safety and Health Act for the Mining and Quarrying Safety and Health Act and fully support that amendment.*[117]

The QRC advised that it supported the proposal in principle, provided the application is consistent with privacy principles, and noted that the 'availability of such a register will simplify the process of confirming that individuals have the required competencies for their roles'.[118]

Privacy of information in relation to clauses 29 and 76 is examined in section 3.1.1.3 of this report - Compliance with the *Legislative Standards Act 1992*.

2.8 Health surveillance

Clauses 4 and 51 of the Bill propose to amend the objectives the CMSHA (section 7) and MQSHA (section 7), to include the health surveillance of current and former miners. While both the CMSHA and MQSHA contain broad objects aimed at the protection of safety and health of persons at mines and as a result of mining operations, these Acts do not specifically acknowledge the importance of health surveillance. Further, while the CMSHA includes 'health assessment of coal mine workers' in its objective,[119] the MQSHA does not include a similar provision.

The explanatory notes stated that health surveillance should be specifically included as a way the objects of both Acts are to be achieved, given the 'significant role of health surveillance achieved through the Coal Mine Workers' Health Scheme' and that 'a comparable amendment would future-proof the MQSHA in terms of emerging health issues'.[120]

The committee asked the department at the public briefing how this will be achieved in practice, and the department responded:

> *That is the subject of reform work that is currently being undertaken as the department implements the recommendations of the Monash review of the Coal Mine Workers' Health Scheme, which occurred in 2016. A number of administrative changes have happened, but part of that reform work will also involve the development of regulations, which is underway at the moment, that will provide for the detail of how health surveillance may be undertaken.*[121]

Stakeholder submissions generally supported the proposed amendment,[122] with CCAA providing support in principle, while requesting further information and consultation, including on how the amendment would be implemented.[123] The QRC fully supported the proposed amendments to the

115 Explanatory notes, p 3.

116 Submissions 1, 8, 4.

117 Public hearing transcript, Moranbah, 19 April 2018, p 10.

118 Public hearing transcript, Moranbah, 19 April 2018, p 3.

119 CMSHA, s 7(k).

120 Explanatory notes, p 4.

121 Public briefing transcript, Brisbane, 12 April 2018, p 7.

122 See for example submissions 1 and 4.

123 Submission 5, p 2.

CMSHA and provided in principle support for the proposed amendments to the MQSHA, subject to 'further discussion about the regulatory amendments possibly increasing the regulatory burden in the metalliferous mining sector'.[124]

Clause 48 proposes to amend schedule 2, part 2, to replace item 29 of the CMSHA to extend coverage of item 29 to also deal with matters pertaining to the health of persons who have been employed at a coal mine. The explanatory notes advised:

> *This will allow the regulation to address matters relating to persons previously employed at a coal mine (e.g. retired coal mine workers). The clause also specifies the matters that may be addressed under the regulation.*[125]

The CFMEU recommended 'the roles responsibility and funding of the Health Surveillance Unit and or the Department of Mines and energy in relation to the medical scheme and respiratory assessment should be included in this section of the regulation'.[126]

The department responded by stating:

> *The functions undertaken through the Health Surveillance Unit are provided for under the proposed amendments to schedule 2 and prescribed under regulation. It is not common practice to provide provisions regarding funding in legislation.*
>
> *The department makes the observation that this issue was in part the subject of recommendations of the Coal Workers' Pneumoconiosis select committee; and consultation on this issue is currently being undertaken.*[127]

Committee comment

The committee noted the general support provided by stakeholders for the proposed amendments relating to health surveillance and also noted the department's commitment to continue consultation on the proposed regulatory amendments.

2.9 Notification of diseases

Under the CMSHA, an SSE is responsible for providing an inspector and industry safety and health representative, notice about a report of a disease prescribed under regulation (a 'reportable disease').[128] For the CMSHA, reportable diseases are: chronic obstructive pulmonary disease, coal workers' pneumoconiosis, legionellosis, and silicosis.[129]

A similar obligation exists under the MQSHA, in which the SSE must provide notice to an inspector and district workers' representative.[130] Reportable diseases for the MQSHA are: asbestosis, chronic obstructive pulmonary disease, legionellosis, occupational asthma, occupational cancer and silicosis.[131]

The Bill proposes to amend both the CMSHA and MQSHA to expand who is responsible for the notification of reportable diseases. Clauses 35 and 78 of the Bill propose to amend section 198 of the CMSHA and section 195 of the MQSHA, to state that a person prescribed by regulation must give notice of the diagnosis to the chief inspector.

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124 Public hearing transcript, Moranbah, 19 April 2018, p3.

125 Explanatory notes, p 37.

126 Submission 6, p 11.

127 DNRME, correspondence dated 20 April 2018, p 10.

128 CMSHA, s 198(6).

129 Coal Mining Safety and Health Regulation 2017, Schedule 1.

130 MQSHA, s 195(6).

131 Mining and Quarrying Safety and Health Regulation 2017, Schedule 1A.

Although no exhaustive list has been provided of who may be a person prescribed by regulation for these purposes, the explanatory notes advise it may include, as well as an SSE, a 'medical practitioner making the diagnosis of a reportable disease'.[132]

The MMAA supported the proposed amendments to expand persons who must notify of reportable diseases, noting 'in many instances the SSE would be unaware of the exact nature of the disease due to privacy issues and thus a notifiable disease may be missed if it falls solely to the SSE to notify.'[133]

The QRC supported the proposed amendment in principle, however recommended that in addition to the proposed amendments, the SSE should also be notified of a reportable disease, as it would allow them to 'discharge their duties to ensure that risks to health and safety at the mine are at an acceptable level'.[134] At the public hearing in Moranbah, the QRC added:

> *We believe that this could be one of the factors that contributed to the re-identification of coal workers' pneumoconiosis. One of the things identified by the Monash review was the small number of cases that were identified by the medical practitioners that were not acted upon appropriately. If that information had gone to the SSE, that would have been much less likely to occur.*[135]

The QRC also submitted that 'further legislative amendment is required to fully disentangle the issue of fitness for work from health surveillance and to allow fitness for work to be managed just like any other hazard at a mine'.[136] At the Moranbah public hearing, the QRC added:

> *This was actually proposed in the 2013 RIS but has stalled. The QRC understands that amendments were drafted at that time but have never been progressed. We encourage the minister to also release these amendments for stakeholder comment because we believe they are likely to be consistent with the Monash review recommendations.*[137]

The department responded:

> *The QRC's position that SSEs should also be notified of any reportable diseases is noted but the department acknowledges that there are also worker privacy issues to be balanced.*
>
> *The department considers that there may be merit in exploring the QRC's range of comments further through the tripartite process.*[138]

At the public hearing in Mount Isa, the AWU advised that it has a problem with reportable diseases not being captured accurately and recommended that the bill be amended 'so there is a clear obligation to make sure these are reported, regardless of any nondisclosure agreement signed or deals done with any solicitors'.[139]

Committee comment

The committee noted stakeholder support for the proposed amendments to the notification of reportable diseases and was satisfied with the Bill's aim to support health and safety of previous, current and future mine workers.

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132 Explanatory notes, p 33.

133 Submission 1, p 7.

134 Submission 8, pp 3-4, 13.

135 Public hearing transcript, 19 April 2018, Moranbah, p 3.

136 Submission 8, p 13.

137 Public hearing transcript, 19 April 2018, Moranbah, p 3.

138 DNRME, correspondence dated 20 April 2018, p 10.

139 Public hearing transcript, Mount Isa, 18 April 2018, p 3.

The committee noted the concern raised about reportable diseases not being captured accurately and seeks clarification from the Minister, in the second reading speech, about whether nondisclosure agreements impact on the obligation to report a disease.

The committee also considered the QRC's suggestion that the SSE should be notified of a reportable disease to allow them to discharge their duties to ensure that risks to health and safety at the mine are at an acceptable level. The committee considers that it is important that the SSE be aware of cases of reportable disease amongst the workers at the mine to ensure appropriate measures are put in place to protect the health and safety of the employee. However, the committee discussed the importance of appropriate protections for employees, following such an admission, against any adverse workplace action, such as diminished duties or dismissal.

The committee noted that amendments were made in 2017 to the *Workers' Compensation and Rehabilitation Act 2002* to introduce additional lump sum compensation for workers diagnosed with a pneumoconiosis, including coal workers' pneumoconiosis, silicosis or asbestosis, to enable these workers to have access to compensation for their injury, even in circumstances where they are not suffering any permanent impairment or incapacity for work.[140] The committee also noted that these amendments were part of a broader package of initiatives that included a commitment to enhancing available rehabilitation and support to assist workers into suitable alternative work duties or employment.[141]

Recommendation 3

The committee recommends the Minister consider amending the Bill to require that site senior executives be notified, on a confidential basis, of relevant cases of reportable diseases to allow them to ensure that the risks to the health and safety of the employee are at an acceptable level.

2.10 Release of information

Under the CMSHA and MQSHA, public statements may be made by the Minister, chief executive, commissioner or chief inspector, which identify and provide information about certain matters including the commission of offences and investigations about serious accidents.[142]

Clauses 45 and 88 of the Bill propose to amend the CMSHA (section 275AC) and MQSHA (section 254C), to broaden the type of information which may be released, including to 'broaden the categories of incidents about which information can be released to all accidents'[143] and align with changes proposed to the suspension or cancellation of a certificate of competency or SSE notice.[144] At the public briefing, the department advised:

> *This will broaden the categories of incidents about which information can be released to all accidents. Sometimes the most significant near misses, the incidents that might offer the*

140 Explanatory notes, Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis) and Other Legislation Amendment Bill 2017, p 2.

141 Hon Grace Grace MP, Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs, 'Extra support on way for Queensland coal workers', Ministerial media statement, 23 March 2017, http://statements.qld.gov.au/Statement/2017/3/23/extra-support-on-way-forqueensland-coal-workers. See also Coal Workers' Pneumoconiosis Select Committee, Inquiry into the re-emergence of coal workers' pneumoconiosis amongst coal mine workers in Queensland, public briefing transcript, Brisbane, 14 October 2016, pp 20 – 21.

142 CMSHA, s 275AC(1); MQSHA s 254AC(1).

143 DNRME, public briefing transcript, Brisbane, 12 April 2018, p 6.

144 Explanatory notes, p 36.

greatest learnings to industry, might not necessarily result in a fatality or a serious injury. Nevertheless, as I said, they may offer significant learnings to the industry.

We are seeking to broaden the scope of incidents about which information can be released. The information that can be released are things like investigation reports, nature and cause reports and information about enforcement action that has happened. It serves to heighten the level of awareness in the industry about the risks and hazards that might be prevalent at the time.[145]

The explanatory notes advised that the aim of the proposed amendments is:

… that industry will learn from the information and be encouraged to improve performance in relation to safety and health management and prevention strategies. Amendments to the CMSHA and MQSHA will strengthen provisions enabling the release of information and clarify the type of information that may be released.[146]

These clauses also propose to introduce protection from liability for statements made in good faith. The amendments reflect similar provisions in New South Wales (NSW).[147]

Stakeholders generally supported the proposed amendments,[148] but a number of stakeholders raised concerns regarding adequate protections of personal information.

The MMAA supported the proposed amendment, stating 'we trust that sufficient legal safeguards will be enacted to provide for early release of information based on the best available information at the time of transmittal';[149] and noting the proposed amendments would allow for 'sufficient detail for other operations to immediately conduct a risk assessment to establish whether a similar hazard/s exist at that operation'.[150] At the Moranbah public hearing, the MMAA advised:

In terms of the release of information, this has been a long time coming and is fully supported. It is critical that information relating to any potential hazard be released at the first available juncture, without fear of legal action if some error may occur and that information released. That error can be addressed later but the potential hazards cannot.[151]

The QRC supported the proposed amendment in principle, subject to adequate protection of personal information.[152] The QRC also supported the proposal to allow for public statements to be made about cancellation of an SSE notice, 'only where the cancellation occurs due to it being obtained by fraud, or where it is ordered by a court',[153] but did not support 'the proposal to allow the chief executive to cancel a statutory ticket'.[154]

The department responded:

The provision providing for the release of information relating to suspension of cancellation of a SSE notice mirrors the existing power to release information for a cancellation of a certificate of competency by the BoE [Board of Examiners] where the certificate was obtained by fraud. There may be situations where in the interest of worker safety or the public, it would be relevant for a public statement to be made regarding the cancellation or suspension of a SSE notice.

145 Public briefing transcript, Brisbane, 12 April 2018, pp 6-7.

146 Explanatory notes, p 5.

147 *Work Health and Safety (Mines) Act 2013* (NSW), section 70; explanatory notes, p 15.

148 See for example, Together, submission 4, p 2.

149 Submission 1, p 7.

150 Submission 1, p 7.

151 Public hearing transcript, Moranbah, 19 April 2018, p 10.

152 Public hearing transcript, Moranbah, 19 April 2018, p 3; Submission 8, p 14.

153 Submission 8, p 15.

154 Public hearing transcript, Moranbah, 19 April 2018, p 4.

> *Information relating to the status of certificates will also be available through the register to be kept by the BoE.*[155]

Privacy of information is also examined in section 3.1.1.2 and section 3.1.1.3 of this report - Compliance with the *Legislative Standards Act 1992*.

Committee comment

The committee noted the concern raised by stakeholders in relation to the protection of personal information, and has provided further comment on this in the section of this report - Compliance with the *Legislative Standards Act 1992*.

2.11 Officer obligations

The Bill proposes to place a positive safety and health obligation on officers of corporations to exercise due diligence via clause 13, which proposes to insert new part 3, division 3A in the CMSHA and clause 61 which proposes to insert new part 3, division 3A in the MQSHA. The explanatory notes advised that this is consistent with the approach to executive officer liability under Queensland's WHS Act where an officer must exercise an appropriate level of due diligence, commensurate with the position and influence of the officer.[156]

The WHS Act definition of 'officer' in relation to a corporation is the meaning of 'officer' under the *Corporations Act 2001* (Cth).[157] While the QRC supported the adoption of positive obligations for executive officers, it did not support the proposal to adopt the definition of 'officer' from the *Corporations Act 2001* (Cth):

> *The word 'officer' in the WH&S Act has a broader meaning and application than the definition of 'executive officer' in the resource safety Acts, meaning more people will be exposed to the obligations and liabilities if applied under the Resources Acts. The QRC … opposed expanding the range of people that have such obligations and liabilities without evidence that there would be some safety benefit. … Once again, it is an example of attempting alignment between the enforcement aspects of safety legislation without delivering any of the benefits that would come from broad legislative harmonisation.*[158]

In response to the QRC's concerns, the department referred to supporting evidence in the Decision RIS tabled in Parliament on 22 March 2018 that provided the safety related reasons for the proposed amendments.[159]

The explanatory notes advised:

- if a corporation has an obligation under the Act, the officers must exercise due diligence to ensure the corporation complies with the obligation
- an officer may be convicted or found guilty of an offence relating to an obligation of the officer whether or not the corporation has been convicted or found guilty of an offence relating to an obligation of the corporation
- the proposed amendments create a positive duty on officers to take immediate steps to ensure compliance by the company, rather than accountability only applying after contravention by the company, and

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155 DNRME, correspondence dated 20 April 2018, p 11.

156 Explanatory notes, p 5 and p 21.

157 DNRME, correspondence dated 20 April 2018, p 7.

158 Submission 8, pp 6-7.

159 DNRME, correspondence dated 20 April 2018, p 12.

- the requirements of due diligence apply whether or not there has been an incident and irrespective of whether the company is prosecuted.[160]

The department further advised:

> *These provisions reflect a deliberate policy shift away from applying 'accessorial' or 'attributed' liability to officers, to a requirement for officers to be proactive. This means that officers owe a continuous duty to ensure compliance with duties and obligations under the legislation.*[161]

Examples of due diligence provided in proposed legislation section 47A(3) and proposed section 44A(3) include taking reasonable steps to:

- acquire and keep up-to-date knowledge of mine safety and health matters
- gain an understanding of the nature of mining operations at a mine and generally of the hazards and risks associated with those operations
- ensure the corporation has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to safety and health from work carried out as part of coal mining operations
- ensure the corporation has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information
- ensure the corporation has, and implements, processes for complying with any obligation of the corporation under the Act, and
- verify the provision and use of the resources and processes mentioned above.

The MMAA advised the committee that it supported the amendments regarding officer obligations and would encouraging going further and strengthening the already mandated requirement that non-qualified individuals cannot give technical direction to those who are statutorily qualified:

> *Provision should also be made to protect individuals who report persons who have failed to comply with or ignore this requirement. The requirement for executive officers to ensure effective monitoring, auditing and review of safety and health monitoring at a board level is critical. That was identified in the paucity of such action contributing to the catastrophic events at Pike River.*[162]

The CFMEU recommended in 2017 that clause 13 which includes the proposed new section 47A regarding obligations of officers of corporations should include a requirement for officers to receive audit reports and ensure these are actioned. To address this concern, the 2018 Bill has been amended to include the following example:

> *If the corporation is a coal mine operator, verifying the provision and use of the resources and processes to ensure the operator complies with the requirement under section 41(1)(f) (including, for example, having regard to each report given by the operator in relation to an audit of the effectiveness and implementation of the mine's safety and health management system).*[163]

The CFMEU noted that the proposed amendments in the 2018 Bill responds to its 2017 concerns.[164]

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160 Explanatory notes, p 21.

161 DNRME, correspondence dated 20 April 2018, p 12.

162 Public hearing transcript, Moranbah, 19 April 2018, p 10

163 Mines Legislation (Resources Safety) Amendment Bill 2018, proposed section 47A(f).

164 Submission 6, p 5.

2.12 Continuing professional development

Clauses 48 and 90 of the Bill propose to amend the CMSHA (schedule 2) and MQSHA (section 262), to include an ability to create regulations requiring holders of certificates of competency or SSE notices, to undertake CPD decided by the Board of Examiners.

The explanatory notes clarify that:

> *The Board of Examiners issues certificates of competency for life, which may compromise the currency of the necessary competency. To maintain the certificate ongoing professional development is necessary to ensure the holder continues to maintain an appropriate level of competency.*[165]

The explanatory notes also advised that the proposed amendments will ensure consistency with similar legislation and practice in NSW, which recently included provisions introducing practicing certificates based on CPD by holders of certificates of competency.[166]

The MMAA supported the proposed amendments and strongly recommended that the system of practicing certificates introduced in Queensland contain competencies which are aligned with the NSW CPD scheme.[167] In response, the department stated that 'the proposed requirements for the CPD, including aspects of other existing schemes such as NSW, will be considered through the development of the regulation provisions'.[168]

The QRC provided strong opposition to the proposal that the Board of Examiners would decide and impose the CPD requirements,[169] as it was concerned 'there is no confidence within industry for the BoE [Board of Examiners] to either set those requirements or have the capacity to administer them appropriately.'[170] The QRC further emphasised that the process should 'be sustainable and affordable, and it should not be an unreasonable regulatory burden',[171] and recommended:

> *…the function and structure of the BoE should be reviewed through the Project Management Office that will be established by the Queensland Government to undertake consultation with stakeholders regarding the proposal to create a statutory MSHA.*[172]

The department responded by advising:

> *The current functions of the Queensland Board of Examiners are prescriptive and it is unclear if these functions would extend to also cover requirements for practising certificates. In contrast, the functions of the NSW Board are broadly stated which facilitates both the certificates of competency and the practising certificate schemes. The provisions will clarify and confirm that the functions of the Queensland Board are not limited to deciding only the competencies necessary to hold a certificate of competency, but also extend to deciding matters pertaining to continuing professional development of certificate of competency holders (e.g. competencies necessary to hold a practising certificate). This will allow for continuing professional development requirements to be introduced by regulation. Continuing professional development requirements may also be extended to SSE notice holders.*[173]

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165 Explanatory notes, p 5.

166 Explanatory notes, pp 12-13.

167 Submission 1, p 8.

168 DNRME, correspondence dated 20 April 2018, p 13.

169 Submission 8, p 9.

170 Submission 8, p 9.

171 Public hearing transcript, Moranbah, 19 April 2018, p 8.

172 Submission 8, p 9.

173 DNRME, correspondence dated 20 April 2018, p 13.

2.13 Suspension or cancellation of certificates of competency and SSE notices

Clause 30 of the Bill proposes to insert a new section 194A to clarify that the Board of Examiners, among other things, may have regard to the previous surrender, suspension or cancellation of a certificate of competency or SSE notice in deciding whether to grant a certificate or notice to an applicant for, or previous holder of, a suspended or cancelled certificate or notice in the future.[174]

The CFMEU raised a concern that the proposed amendments did not consider if the person has a Notice of Recognition under the *Mutual Recognition Act 1992* (Cth) and recommended that the section be amended to do so as a large number of people operating in the Queensland mining industry now hold such recognition.[175] The department advised in response that the CFMEU's proposal is outside the scope of the existing provisions and any amendments to address Notices of Recognition under the *Mutual Recognition Act 1992* (Cth), need to be considered further, having regard to that Act.[176]

Certificates of competency and SSE notices are currently only able to be cancelled or suspended by a court[177] or by the Board of Examiners where a certificate is obtained through fraud.[178] Clauses 34 and 77 of the Bill propose to insert a new part 10A into the CMSHA and MQSHA, to allow the chief executive to suspend or cancel certificates of competency or SSE notices.

The Bill proposes to expand who can suspend or cancel certificates and SSE notices to emphasise the importance of ensuring 'only those persons who are competent and appropriate hold certificates of competency and undertake safety critical statutory roles on mine sites.'[179] The explanatory notes provided that although these new powers are being introduced:

> *A person will be afforded natural justice and a right to respond before a decision to suspend or cancel is made. The holder whose certificate or notice is suspended or cancelled would have the opportunity to seek external review by the Industrial Magistrates Court. The suspension or cancellation of the certificate or notice may be a matter that could be considered in deciding whether to grant a certificate to the holder in the future.*[180]

For further consideration of this issue, see section 3.1.1.1 of this report - Compliance with the *Legislative Standards Act 1992.*

The MMAA supported the proposal, subject to the holder of the certificate/notice first having the contravention adjudicated by the Board of Examiners, and particularly supported the proposed right to external review which may be sought by the affected certificate holder.[181] At the public hearing in Moranbah, the MMAA advised:

> *Our association is committed to ensuring our members are competent and fully comply with the statutes. Any member who knowingly or wilfully breaches legislation will receive no support from our organisation. Our one caveat on that which is being proposed is that the alleged errant official should be judged firstly by a body of his peers—the Board of Examiners—and only on their recommendation would the CEO act. We also appreciate that the individual concerned still*

174 Explanatory notes, p 22

175 Submission 6, p 10.

176 DNRME, correspondence dated 20 April 2018, p 13.

177 CMSHA, s 258; MQSHA s 237.

178 CMSHA, s 195.

179 Explanatory notes, p 13.

180 Explanatory notes, p 6.

181 Submission 1, p 8.

has the right to refer the matter to an external review through the Industrial Magistrates Court.[182]

The department did not agree with the MMAA's suggested approach of adjudication, advising:

Decision-making about contraventions of the Act is a regulatory function, for which the chief executive and inspectorate are responsible. The BOE does not have a regulatory function in respect of contraventions of the Act. Therefore it is inappropriate that the BOE make decisions about whether holders of statutory certificates or SSE notices have failed to comply with the Act.[183]

The CFMEU submission noted that the *Acts Interpretation Act 1954* gives the power to a body who can make a decision to repeal or change a decision and questioned how this affects, or is affected by, proposed new Part 10A.[184] The department responded by advising that the *Acts Interpretation Act 1954* will not be affected as a result of new Part 10A.[185]

The QRC did not support the proposed amendments, instead suggesting 'a cancellation of a statutory ticket should only be granted by application to the Magistrate's Court':

The QRC is of the view that this proposal clearly makes the rights conferred on an individual (in the form of a certificate or notice that has been issued) subject to an administrative power, and believes that the proposed review through the Magistrates Court is inappropriate if a certificate or notice is to be cancelled. The proposal gives the Chief Executive the opportunity to exercise a power to cancel a certificate or notice, potentially with a much lower threshold of proof that a person has contravened a safety and health obligation, than would apply if that person had been charged with an offence. While the certificate holder can ultimately appeal to the Magistrates Court, they may be prevented from doing so by their personal circumstances, and if faced with an uncertain outcome a person could regard the additional expense of an appeal prohibitive.[186]

As an alternative, the QRC suggested use of existing processes whereby the Mines Inspectorate can take action if it is believed a person has contravened an obligation under the relevant legislation, and would consider amendments which provide an ability for an administrative suspension to a person's certificate or notice.[187] The QRC believed the amendments themselves to be unclear, and 'that suspension of a certificate or notice should not follow a recommendation of the Board of Examiners (BoE), but should be taken by the Chief Executive considering advice from the chief inspector.'[188]

In response, the department emphasised the need for ensuring only competent and appropriate persons hold certificates of competency, and provided:

Where a person fails to comply with their safety and health obligations under the Acts, this can pose a risk to the safety and health of workers at a mine. The proposal will enable the chief executive to suspend or cancel a certificate or notice in certain circumstances. A person will be afforded natural justice and a right to respond before a decision is made. A right of external review by the Industrial Magistrates Court will also be available. This proposal is aimed at improving the safety and health of workers and ensuring that those persons in safety critical

182 Public hearing transcript, Moranbah, 19 April 2018, p 10.

183 DNRME, correspondence dated 20 April 2018, p 13.

184 Submission 6, p 10.

185 DNRME, correspondence dated 20 April 2018, p 14.

186 Submission 8, p 5.

187 Submission 8, pp 5, 6.

188 Submission 8, p 6.

roles at mine sites required to hold certificates or notices are appropriately qualified and competent.[189]

Committee comment

The committee noted the concerns raised by stakeholders and also the department's advice that the proposed amendments are aimed at improving the safety and health of workers and ensuring that those persons in safety critical roles at mine sites required to hold certificates or notices are appropriately qualified and competent.

The committee further considered the proposed amendments in the section of this report - 3.1.1.1 Compliance with the *Legislative Standards Act 1992*.

2.14 Penalties

The Bill proposes to increase penalties via amendments to the CMSHA and the MQSHA to make them consistent with the WHS Act, and to introduce civil penalties to be imposed on mining companies who fail to meet their safety and health obligations.[190]

2.14.1 Increase in current maximum penalties

The Bill proposes to amend the CMSHA and the MQSHA to increase existing maximum penalties. The penalties adopt a tiered approach, with higher penalties for corporations and officers of corporations.

The proposed maximum financial penalties are set to be more closely aligned with the maximum financial penalties in the WHS Act.[191]

The explanatory notes provided the following justification for increasing penalties:

Maximum penalties under the CMSHA and MQSHA have not been increased since 2007 and are significantly lower than the penalties prescribed in the WHS Act. The WHS Act framework also provides for officers as a separate category being subject to higher maximum financial penalties compared to other individuals.[192]

The explanatory notes also acknowledged that the maximum financial penalties under the amended CMSHA and MQSHA will be higher than those in the WHS Act:

While aligning maximum penalty units will provide a level of equity, it is acknowledged that this will result in higher maximum financial penalties under the amended CMSHA and MQSHA due the higher value of a penalty unit under these Acts. It is reasoned however that while this introduces a discrepancy; the WHS Act maximum penalties have not been adjusted since 2011 and when this occurs nationally, it is expected that no further changes to the CMSHA and MQSHA will be required as the maximum financial penalties have been increasing incrementally over time.[193]

The QRC did not support the increase in penalties. However, the QRC suggested indicated that if the proposal proceeds, there should be proper and ongoing alignment between the value of the penalty

189 DNRME, correspondence dated 20 April 2018, p 14.

190 DNRME, correspondence dated 3 April 2018, pp 2-3.

191 Explanatory notes, p 11.

192 Explanatory notes, p 5.

193 Explanatory notes, pp 11-12.

unit under the resources legislation and the WHS Act.[194] In response to a question from the committee at the Moranbah public hearing, the QRC stated:

> *I think our position would be that if you are looking at imposing a fine of that size as an administrative penalty then it must be a fairly serious breach and it should be considered for prosecution. I do not think we would support the concept that having high fines would be a deterrent to behaviour. I do not think there is any evidence for that in this industry—that having fines of that nature would achieve that outcome. I think we would far rather see other components of the compliance framework being used.*
>
> *… We believe this kind of a fine is sending the wrong signal. The difference with what is in the Work Health and Safety Act is that that act defines a range of administrative non-compliances as being civil penalty provisions for which proceedings can be taken in a Magistrates Court under the rules of evidence and procedure for civil proceedings, which is quite different to what is proposed as an administrative fine given by the department.*[195]

The department advised in response that the increase to financial penalties under the mining Acts ensures a greater level of equity with similar provisions under the WHS Act:

> *This increase aims to improve the safety and health of workers and provide a deterrent to non-compliance. The penalty unit amount applied under the mining Acts is that which is set under the Penalties and Sentences Act 1992.*[196]

The MMAA submitted that whilst it believes 'the penalties are excessive it is difficult to argue that case given the proposed amendment aligns with the penalty provisions of the general workplace'.[197]

The CFMEU and the AWU supported the proposed increase in the penalties.[198] The AWU provided the following advice to the committee at the Mount Isa public hearing:

> *I think you also have to remember that there is a lot more money at stake with mining, so maybe the penalties should be adjusted relevant to the royalties that they bring in. That would also provide a higher level of accountability and responsibility. It is absolutely a driver. You have to look at that and think there are arguments for and against, but you also have to think to yourself: if they put a serious penalty in place and you are an SSE or you are a mine operator, are you going to deliberately go out there and shirk your obligation because the penalty is so severe? You are going to make sure you do your due diligence and you are going to make sure you have everything done properly, in my belief. For some people it would not matter what penalty you put there, because they are still going to operate the way they do and hope that nothing goes wrong.*[199]

2.14.1.1 Penalty for discharge of obligations

The amendments proposed in the 2017 Bill reduced the penalty in section 34(d) of the CMSHA and section 31(d) of the MQSHA for an individual from the current 750 to 500 penalty units and removed the current consistency of penalties for contraventions causing bodily harm or involving exposure to a substance that is likely to cause death or grievous bodily harm.[200]

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194 Submission 8, Appendix A, p 2.

195 Public hearing transcript, Moranbah, 19 April 2018, p 5.

196 DNRME, correspondence dated 20 April 2018, p 11.

197 Submission 1, p 7.

198 CFMEU submission 6, p 4; AWU, public hearing transcript, Mount Isa, 18 April 2018, p 12.

199 Public hearing transcript, Mount Isa, 18 April 2018, p 12.

200 DNRME, correspondence dated 3 April 2018, p 4.

The department advised the committee that in the 2018 Bill:

- the maximum penalty to apply to new section 34(d)(iii) CMSHA (contravention involving exposure to a substance that is likely to cause death or grievous bodily harm) will be 750 penalty units, to be consistent with the existing maximum penalty unit amount
- to ensure continued consistency with section 34 (c), the corresponding penalty for an offence for a corporation in section 34(d)(i) will be 7500 penalty units and in (d)(ii) 1500 penalty units for an offence committed by an officer of a corporation, and
- the same correction is made to the corresponding section 31(d) of the MQSHA. [201]

The QRC submitted that no reason had been provided for this change, and while these penalties were discussed by CMSHAC, there was no resolution that they be further amended.[202]

The committee sought advice from department about the reason for this change at the public briefing, and the department advised that it was simply a drafting error in the 2017 Bill and that the proposal was always to bring the maximum penalties to the level that is proposed in the 2018 Bill.[203]

The QRC noted the advice from the department and advised that it still does not support this further increase in penalties because it was not requested by CMSHAC when it was discussed.[204]

For further discussion on increases to the penalty regime and issues raised by stakeholders, see section 3.1.1.4 of this report - Compliance with the *Legislative Standards Act 1992*.

2.14.2 Introduction of civil penalties

The Bill proposes to enable the chief executive to impose civil penalties against corporations who are mine operators or contractors, who fail to comply with certain obligations or requirements under the CMSHA and the MQSHA.

According to the explanatory notes, civil penalties 'are necessary to provide for action to be taken to address non-compliance', and may be applied 'where a breach requires direct redress and is sufficiently significant to warrant a significant financial penalty'.[205]

The Bill prescribes three categories of civil offences (categories 1, 2 or 3) based on the level of the safety and health obligation and associated safety and health risk to persons at the mine:

- 1,000 penalty units for category 1
- 750 penalty units for category 2, and
- 500 penalty units for category 3.[206]

It is proposed that the imposition of category 1 would attract a monetary penalty of just over $126,000, for corporations who are mine operators or contractor companies that fail to comply with their mining safety obligations.[207]

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201 DNRME, correspondence dated 3 April 2018, p 4.

202 Submission 8, Appendix B, p 1.

203 Public briefing transcript, Brisbane, 12 April 2018, p 6.

204 Submission 8, Appendix B, p 1.

205 Explanatory notes, p 14.

206 Based on the value of $126.15 per penalty unit, effective as at 1 July 2017.

207 DNRME, correspondence dated 3 April 2018, p 3.

The provision also provides that corporations who are mine operators or contractors would be liable where a representative such as an officer, employee or agent fails to comply with certain obligations or requirements under the CMSHA or MQSHA.[208]

The QRC argued that the civil penalties are 'effectively a system of administrative fines that are inappropriate in the context of some potentially serious concerns about mining safety and health'.[209] The QRC commented that the responsibilities and duties of the Mines Inspectorate are more effective at addressing breaches of mining safety legislation than strong penalties:

> *[O]ur position would be that if you are looking at imposing a fine of that size as an administrative penalty then it must be a fairly serious breach and it should be considered for prosecution. I do not think we would support the concept that having high fines would be a deterrent to behaviour. I do not think there is any evidence for that in this industry—that having fines of that nature would achieve that outcome. I think we would far rather see other components of the compliance framework being used.[210]*

In response to a question from the committee at the public briefing about whether the current penalties are not considered sufficient to be a deterrent, the department advised:

> *Currently, we have a range of compliance tools available to us, including things like issuing directives to mines to take certain actions and then, at the other end, prosecution. One of the drawbacks with prosecution is that it takes a long time and it is not necessarily always the best way of immediately driving better behaviours around the risks.*
>
> *Civil penalties offer a mechanism where, in the case of black-and-white offending, they can be quite quickly actioned through a process that will involve giving natural justice to corporations, requiring them to establish why a civil penalty should not be applied to them. If I can use an example, for things such as failing to submit the dust-monitoring results that they are required to do, they can be issued with a notice that says, 'You have 14 days to show cause as to why you should not receive this penalty.' It sends a very strong message that, if do you not comply with these obligations that underpin the system, it will not be tolerated. It is immediate and often the penalties and the prosecutions, aside from taking a long time, are often inadequate.[211]*

The explanatory notes advised that the Bill allows natural justice and a right of appeal to be afforded to a corporation liable for a civil penalty, and that the right to appeal would be to the Industrial Magistrates Court.[212]

The civil penalty provisions are intended to be located in subordinate legislation. According to the explanatory notes, the provisions creating the prescribed breaches to which civil penalties apply will be contained in the CMSHA and the MQSHA, and as the breaches to which civil penalties apply do not of themselves create any new obligations or requirements, it is considered 'to be an appropriate case for delegation to be located in the subordinate legislation'.[213]

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208 Explanatory notes, p 14.

209 Public hearing transcript, Moranbah, 19 April 2018, p 4.

210 Public hearing transcript, Moranbah, 19 April 2018, p 5.

211 Public briefing transcript, Brisbane, 12 April 2018, p 7.

212 Explanatory notes, p 14.

213 Explanatory notes, p 19.

2.14.2.1 Concerns of double jeopardy

In relation to civil penalties, the Queensland Law Society (QLS) observed that, 'as the Bill currently stands a person can be issued a not insignificant administrative penalty and still be prosecuted for the same non-compliance'.[214]

The QRC reiterated its comment from 2017 in regards to civil penalties, namely that:

> *… the construction of the 2017 Bill allows that a corporation could be prosecuted for an offence and found not guilty, but then have a civil penalty imposed for the same alleged contravention.*[215]

The QRC stated that: 'this is an issue where a legislative fix could put the matter beyond doubt'.[216]

The QLS also called for amendment to the Bill:

> *QLS strongly suggests that the Bill be amended to include a declaratory statement to the effect that a criminal prosecution cannot be pursued after a civil penalty may been imposed for the same non-compliance.*[217]

The QLS recommended that a prosecutor be required to make a clear election, when investigating a non-compliance, to pursue a civil penalty or criminal prosecution.[218]

In response to this matter, the department noted:

> *A civil penalty will not be imposed after any criminal proceedings. There may be instances where it may be necessary for criminal proceedings to commence after a civil penalty is imposed, however this would be subject to the existing considerations in determining whether to commence proceedings i.e. a matter is in the public interest etc. If a civil penalty was imposed, this would be a matter that would be considered in determining whether to commence a proceeding. Natural justice will be afforded to a company prior to a decision being made to impose a civil penalty. The timeframe of 14 days is the minimum and a longer period may be applied, particularly where a matter may be complex or further time would be required for the company to adequately respond to the notice. These issues can be managed on a case by case basis and do not require prescription in legislation.*[219]

Committee comment

The committee noted concerns raised by stakeholders in relation to civil penalties, and the possibility that a person or corporation may be issued a civil penalty and still be prosecuted for the same offence. The committee invites the Minister to address the issue during debate on the Bill in the House, to address stakeholder concerns.

2.15 Other issues raised by stakeholders

During the committee's consideration of the Bill, stakeholders raised various issues which did not relate specifically to amendments proposed by the Bill. This included:

- issues regarding the possession of appropriate qualifications by statutory position holders, including of SSEs (including the suggestion of a minimum First Class Mine Managers' Certificate, and that the requirement for a First Class Manager at an open cut coal mine be reintroduced)[220]

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214 Submission 9, p 2.

215 Submission 8, p 3.

216 Submission 8, p 3.

217 Submission 9, p 2.

218 Submission 9, p 2.

219 DNRME, correspondence dated 20 April 2018, p 15.

220 MMAA, submission 1, p 5; MMAA, public hearing transcript, Moranbah, 19 April 2018, p 4.

- a call for an in-depth audit program for the Inspectorate[221]
- a call for national compliance guidelines or codes of practice[222]
- concerns regarding the lack of worker participation in health and safety reviews and general matters[223]
- the use of swipe cards in mine sites (to assist in monitoring worker exposure to dust and other hazards)[224]
- changes made by the Land, Explosives and Other Legislation Bill 2018, which affect coal mines (and potentially the CMSHA)[225]
- issues raised through the review of the National Mine Safety Framework, which have not been addressed by the Bill[226]
- issues considered by the tripartite CMSHAC, which have not been addressed by the Bill[227]
- the selective application of proposals made in the *Queensland's Mine Safety Framework Consultation Regulatory Impact Statement* in 2013, and a perceived lack of evidence that the proposals will lead to safety improvements[228]
- a concern regarding the potential significant costs to implement some of the Bill's proposals – in particular, the Board of Examiner processes related to competencies and statutory tickets[229]
- emphasis on the initial aim to harmonise mining legation with other Australian jurisdictions and the WHS Act,[230] and the suggestion that the amendments to the CMSHA and MQSHA could be further aligned with the WHS Act[231]
- the potential consideration of including industrial manslaughter in the CMSHA/MQSHA[232]
- concerns regarding the appointment of SSEs[233]
- reprisals for workers raising health and safety concerns[234]
- the proportion of labour hire workers in the industry as opposed to the permanent workforce[235]

221 MVA, submission 2, p 2.

222 MVA, submission 2, p 2.

223 Ian Hope, submission 3, p 2.

224 Ian Hope, submission 3, p 2.

225 CFMEU, submission 6, p 3.

226 CFMEU, submission 6, p 4; CFMEU, public hearing transcript, Brisbane, 23 April 2018, p 9.

227 CFMEU, submission 6, p 4; CFMEU, tabled Paper, 23 April 2018.

228 QRC, submission 8, Appendix p 1.

229 QRC, submission 8, Appendix p 1.

230 QRC, submission 8, p 1; QRC, public hearing transcript, Moranbah, 19 April 2018, p 4

231 AWU, public hearing transcript, Mount Isa, 18 April 2018, p 3.

232 Public hearing transcript, 19 April 2018, Moranbah, pp 7, 20; AWU, public hearing transcript, Mount Isa, 18 April 2018, p 9.

233 Mr Jason Meikle, public hearing transcript, Moranbah, 19 April 2018, p 17.

234 Mr Jason Meikle, public hearing transcript, Moranbah, 19 April 2018, pp 18, 20; AWU, public hearing transcript, Mount Isa, 18 April 2018, p 7; CFMEU, public hearing transcript, Brisbane, 23 April 2018, p 10.

235 Mr Jason Meikle, public hearing transcript, 19 April 2018, Moranbah, p 19.

- the length of time to resolve issues regarding mine health and safety,[236] and
- the lack of regulation regarding ventilation control plans, and principal hazard management plans for non-coal mines in Queensland.[237]

[236] AWU, public hearing transcript, Mount Isa, 18 April 2018, pp 1, 8; CFMEU, public hearing transcript, Brisbane, 23 April 2018, p 6.

[237] MVA, public hearing transcript, Brisbane, 23 April 2018, p 1; MVA, submission 2, p 1.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' (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
- the institution of Parliament.

The committee has examined the application of the FLPs to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

The following clauses raise potential FLP issues regarding the rights and liberties of individuals.

3.1.1.1 Clauses 34 and 77 – rights and liberties

Clause 34 of the Bill inserts a new part 10A into the CMSHA, giving the chief executive the power to suspend and cancel certificates of competency and SSE notices. Clause 77 effects a virtually identical amendment to the MQSHA (by inserting a new part 10A).

The chief executive can act to suspend or cancel a person's certificate of competency, if:

- the person has contravened a safety and health obligation
- the person has committed an offence against a law of Queensland or another state (a 'corresponding law') relating to mining safety, or
- a certificate, equivalent to a certificate of competency, that was issued to the person under a corresponding law of another state has been suspended or cancelled.

The chief executive can act to suspend or cancel a person's SSE notice if the person has:

- contravened a safety and health obligation, or
- committed an offence against a corresponding law.

The legislative scheme has these features:

- the chief executive must first give the person a notice of the proposed action, detailing the grounds and supporting facts, and allowing a minimum 28 day period for any submission in response
- the person has the right to make a submission as to why the proposed action should not be taken, and the chief executive must consider any submission
- the chief executive must notify the person of any decision then made, including giving reasons and advising of the right to appeal (and to seek a stay) and of appeal processes and time limits
- the person has a right of appeal within 28 days to an Industrial Magistrates Court.

The decision to suspend or cancel these certificates and notices is dependent on the exercise of administrative power by the chief executive. These provisions arguably impact on the rights and liberties of the individuals who hold these certificates and notices.

Section 4(3) of the LSA provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, it:

> *(a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review;*
>
> *(b) is consistent with principles of natural justice;*
>
> *(c) allows the delegation of administrative power only in appropriate cases and to appropriate persons …*

The explanatory notes advised:

> *A holder of a certificate of competency or a site senior executive notice* [has] *significant responsibilities for the safety and health of mine workers. The regulator has an obligation to ensure that risks to safety and health on a mine site are appropriately managed by competent persons who operate in accordance with their lawful obligations.*[238]

The explanatory notes stated that these amendments are justified given*:*

- *the risks to worker safety and health for allowing a person to continue to person statutory functions when they have contravened a safety and health obligation, and*
- *the natural justice that is afforded to the person who holds the certificate of competency or a site senior executive notice.*[239]

Committee comment

The committee considers that there is adequate provision of natural justice and sufficient regard has been had to FLPs given the aims of the Bill and the various requirements for the giving of notice and a statement of reasons, and the existence of appeal rights.

3.1.1.2 Clauses 46 and 89 – privacy of information

Section 275A of the CMSHA deals with disclosure of information. It makes it an offence for a person to disclose information concerning the personal affairs of a person or commercially sensitive information obtained by the person in the administration of the Act, unless the disclosure is made with consent or for certain specified purposes. Section 255 of the MQSHA is in virtually identical terms.

Clause 46 of the Bill proposes to amend section 275A of the CMSHA and clause 89 proposes to amend section 255 of the MQSHA, in virtually identical terms. The amendments (new section 275A(2A) and section 255(2A) respectively) will in each case authorise disclosure, by the chief inspector or chief executive, to the Workers' Compensation Regulator or to WorkCover, of any information the chief inspector or chief executive has that relates to any matter under the *Workers' Compensation and Rehabilitation Act 2003*.

In allowing for the potential disclosure of confidential information regarding an individual clauses 46 and 89 raise a potential breach of the FLP that legislation is required to have sufficient regard to the rights and liberties of individuals under section 4(2)(a) of the LSA.

The explanatory notes provided the following justification:

> *While this is an abrogation of a person's right to keep personal and confidential information about a person private, this amendment is justified for a thorough investigation to be undertaken for matters related to the administration of these Acts.* [240]

238 Explanatory notes, p 16.

239 Explanatory notes, p 16.

240 Explanatory notes, p 17.

In its submission, the Office of the Information Commissioner observed:

> *The Explanatory Notes broadly address the amendments by stating that the provisions are 'justified for a thorough investigation to be undertaken for matters related to the administration of these Acts' and that the 'disclosure of personal information is necessary for the effective operation' of the WCRA* [Workers' Compensation and Rehabilitation Act 2003]. *However, the Explanatory Notes are silent on the specific problems, gaps or harm these provisions seek to address, i.e. what are the deficiencies in the existing regime (including WCRA's compulsion powers* [s275A CMSHA and s255 MQSHA] *that currently prevent thorough investigations and the effective operation of the WCRA?*[241]

Committee comment

The committee noted that the amendments will allow for an individual's confidential information to be provided by the chief inspector or chief executive to the Workers' Compensation Regulator or Workcover in relation to 'any matter' under the *Workers' Compensation and Rehabilitation Act 2003*.

The committee also noted the former committee's discussion of the identical clauses in the 2017 Bill in its report:

> *The committee recognises that the intent of the legislation is to enable the industry to improve safety and health practices and protect the safety of workers. However, the committee considers that the justification for these broad disclosure powers is not sufficiently set out in the explanatory notes and that the department must provide more information in the explanatory notes in regard to any matters that are not consistent with fundamental legislative principles. The committee seeks further information from the department as to how the amended sections will be applied in practice.*[242]

This committee has noted concerns raised in relation to a lack of explanation provided for the abrogation of an individual's right to privacy and invites the Minister to address the issues raised during debate on the Bill in the House.

3.1.1.3 Clauses 29 and 76 – privacy of information

Clause 29 proposes to insert a new section 193A into the CSMHA. Section 193A(1) provides that the Board of Examiners must keep a register, available to the public, of:

- certificates of competency granted by the Board
- SSE notices issued by the Board, and
- notices of registration given by the Board under a mutual recognition Act.

Under section 193A(3), the Board of Examiners may disclose information in the register, other than the contact details of an individual, to any person or agency.

Clause 76 proposes to amend section 185 of the MQSHA in similar terms, requiring the keeping of a similar register. Again, section 185(3) provides that the Board of Examiners may disclose information in the register, other than the contact details of an individual, to any person or agency.

Clauses 29 and 76 will allow for the personal information of individuals contained in a register to be published. This potentially breaches section 4(2)(a) of the LSA, which provides that legislation is required to have sufficient regard to the rights and liberties of individuals.

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241 Submission 7, p 1.

242 IPNRC, *Report No 57, 55th Parliament, Mines Legislation (Resources Safety) Amendment Bill 2017*, October 2017,.p 16.

The explanatory notes provided the following justification:

> *These amendments to establish the register result in a potential infringement of the fundamental legislative principle under section 4(2)(a) of the LSA. This is because the Board could publish information contained in the register. Some of the information to be published may be personal information under the Information Privacy Act 2009 (e.g. a person's name). However, the amendment specifically prevents the Board from publishing other private information such as personal contact details.*
>
> *Currently, any agency, mine operator or other person wanting to confirm that a person is the holder of a valid certificate, notice or letter requires either the consent of the holder or alternatively may request access to the information under the Right to Information Act 2009.*
>
> *The current approach is not only administratively arduous, particularly for employers seeking to confirm the qualifications of candidates for safety critical roles; it also detracts from promoting transparency in the mining industry.*
>
> *While other agencies provide online public access to such information (e.g. Electrical licence holder search), there is currently no provision under Queensland's mining safety laws for the similar disclosure of a person's mining competency status.*[243]

The explanatory notes also added this justification for the potential FLP breach:

> *The potential breach … is considered to be justified given* [the] *significant public-interest benefits associated with the establishment of the register.* [244]

Committee comment

The committee noted the justification that the provisions will allow for greater transparency in the mining industry and enable confirmation of the qualifications of persons for important mining roles and that the provisions do include a limitation, in that an individual's contact details cannot be published.

Given these factors, the committee considers that sufficient regard has been given to FLPs.

3.1.1.4 Clauses 6 and 53, 17 and 65 - appropriate level of penalties

A number of provisions increase existing maximum penalties.[245]

Specifically, Clause 6 proposes to amend the CMSHA (section 34) and clause 53 of the Bill proposes to amend the MQSHA (section 31) to increase the maximum financial penalties for failing to discharge a safety and health obligation. The new penalties adopt a tiered approach, with higher penalties for corporations and corporation officers. Similar tiered changes to penalties in the MQSHA are effected by clause 53.[246]

A number of new offences are proposed by clause 17 (for the CMSHA) and clause 65 (for the MQSHA). These relate to appointment of, and competency requirements for, ventilation officers.

Penalties – clauses 6 and 53

A penalty should be proportionate to the offence for which it applies. The reasonableness and fairness of the treatment of individuals is relevant in deciding whether legislation has sufficient regard to rights

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243 Explanatory notes, p 18.

244 Explanatory notes, p 18.

245 One penalty unit equals $126.15.

246 The current penalties for corporations apply be virtue of section 181B of the *Penalties and Sentences Act 1992* which, for these provisions, provides for a maximum fine for a corporation to be five times the specified penalty.

and liberties of individuals. Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other. [247]

The Office of the Queensland Parliamentary Counsel (OQPC) Notebook states:

> *… the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.* [248]

In noting that the maximum penalties have not increased in the CMSHA and MQSHA since 2007, the explanatory notes further addressed the question of penalties as follows:

> *Greater consistency can be achieved by adopting the maximum penalties under the WHS Act and by adopting subcategories for officers in addition to other individuals, where relevant. It is important to note that the meaning of a "penalty unit" under section 5 of the Penalties and Sentences Act 1992 sets the value of a penalty unit under the WHS Act, set at $100 (for national consistency). The value of a penalty unit under the CMSHA and MQSHA is currently $126.15 (as at 1 July 2017). This is generally adjusted by CPI, yearly.* [249]

The committee noted that, whilst the penalties in terms of the number of penalty units might not have been increased since 2007, the value of a penalty unit has increased, and therefore the maximum penalties have increased in practice.

More specifically, regarding clauses 6 and 53 (proposing to amend section 34 of the CMHSA and section 31 of the MQSHA), the explanatory notes stated:

> *Similar higher penalties are already in the Queensland Work Health and Safety Act 2011 for general workplaces and in other Australian jurisdictions including New South Wales, Tasmania and South Australia which have implemented similar higher financial penalties.*
>
> *Mines and in particular underground coal mines are particularly hazardous working environments and it would not be even handed or just, if safety and health at mines is not also bolstered with similar potential maximum financial penalties for a breach, compared to the maximum penalties that apply for general workplaces under the Queensland Work Health and Safety Act 2011.*[250]

The explanatory notes proceeded to set out the following justification which was provided for the higher penalties in the WHS Act (in the explanatory notes for the relevant Bill), noting that 'the same or similar arguments apply' regarding the current amendments:

> *The increased maximum penalties reflect a combination of factors, including recommendations from the national review of WHS legislation throughout Australia to strengthen the deterrent effect of the penalties, to extend the ability of the courts to impose more meaningful penalties where appropriate and to emphasise to the community the seriousness of the offences under this legislation. There has also been a need to take account of inflation over the last 15 years since the WHS Act was introduced in Queensland. The quantum of the penalties supports the policy objective of the COAG endorsed national harmonised work health and safety framework, which is to promote national uniformity in the application of work health and safety laws and ensure that they are observed.*

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247 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

248 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

249 Explanatory notes, p 5.

250 Explanatory notes, p 20.

> *As is the case with road safety provisions and traffic offences under the Transport Operations (Road Use Management) Act 1995 (the Transport Operations Act), the penalties are proportionate and relevant to the seriousness of the conduct, as there is a risk to personal safety and potential loss of life arising from any breaches… Importantly, the penalties in the WHS Bill 2011 are a maximum only and the courts will retain their discretion to impose lesser penalties depending on the circumstances of the breach and mitigating factors.*[251]

In its submission, the MMAA stated:

> *Whilst we believe the penalties are excessive it is difficult to argue that case given the proposed amendment aligns with the penalty provisions of the general workplace.* [252]

In response to concerns raised by the QLS that adequate justification for the harsh penalties has not been provided,[253] the department advised:

> *The amendments ensure that if a breach of a safety and health obligation results in the serious injury or death of a worker at a mine, there are potentially more consistent maximum penalties compared to if a breach at a general workplace results in the serious injury or death of a worker.*
>
> *It would not be even handed or just for there to remain lower maximum penalties for contraventions of safety and health obligations at mines compared to general workplaces. Increased maximum penalties extend the ability of the courts to impose more meaningful penalties when the contravention is very serious, and courts retain the discretion on a case by case basis to impose lesser penalties depending on circumstances and mitigating factors*.[254]

Committee comment

The committee considers these offences and penalties are proportionate and justified to provide an appropriate level of deterrence, having regard to the objectives of the Bill around increasing worker health and safety in the mining sector.

Penalties – clauses 17 and 65 (section 61 of the CMSHA and sections 64A and 64B of the MQSHA)

The new offences established by these clauses generally attract a maximum penalty of 200 penalty units. The explanatory notes stated that these penalties:

> *… are consistent with maximum penalty units applying in similar existing provisions covering competency requirements for persons in safety critical positions.* [255]

Committee comment

The committee considers that these penalties appear to be proportionate.

3.1.1.5 Clauses 23, 24, 70 and 71 - power to enter premises

Clause 23 proposes to amend section 133(1)(e) of the CMSHA to provide that an officer may enter a place that is, or that they reasonably suspect is, a workplace.

Currently, section 133(1) provides that an officer may enter a place if:

> *(a) the occupier consents to the entry*

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251 Explanatory notes, pp 20-21.

252 Submission 1, p 7.

253 Submission 9, p 1.

254 DNRME, correspondence dated 23 April 2018, p 2.

255 Explanatory notes, p 21.

(b) it is a public place and the entry is made when it is open to the public

(c) the entry is authorised by a warrant

(d) it is a coal mine or

(e) it is a workplace under the control of a person who has an obligation under this Act and is -

(i) open for carrying on business, or

(ii) otherwise open for entry.

Clause 24 proposes to insert new section 138A, regarding entry of residential premises, into the CMSHA. Proposed section 138A provides that an inspector may enter a part of a place used for residential purposes only:

- with the consent of the person with the management or control of the place
- under the authority conferred by a search warrant
- for the purpose of gaining access to a suspected workplace, but only if the officer reasonably believes no reasonable alternative access is available and only at a reasonable time having regard to the times at which the officer believes work is being carried out at the place to which access is sought, or
- if the place is a coal mine.

Similarly, clauses 70 and 71 propose to insert corresponding provisions in the MQSHA (new sections 130(1)(e) and 135A).

These provisions are virtually identical to clauses 23 and 24, save that the last alternative ground for entry under the section 135A is if the place is a mine, rather than a coal mine.

Clauses 23 and 70 will allow an officer to enter a premises that is, or that they reasonably suspect is, a workplace. Further, clauses 24 and 71 provide a discretion to an officer should the officer believe no reasonable alternative access is available and the officer reasonably believes work is being carried out at the place to which access is sought.

In providing a power to an officer to enter premises without a warrant or consent, these sections potentially breach section 4(3)(e) of the LSA which provides that legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

This principle supports a long established rule of common law that protects the property of citizens. The power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate. Strict adherence to the principle might not be required if the premises are business premises operating under a licence or premises of a public authority. The OQPC Notebook states:

> *FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals…*
>
> *… Residential premises in particular should not be entered except with consent or under a warrant or in the most exceptional circumstances.* [256]

[256] OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, pp 45, 46.

Often a concern in this context is the range of additional powers that become exercisable after entry without a warrant or consent.[257] In the present case, both principal Acts provide for extensive powers after entry, including powers to search, seize things, stop and disable plant or equipment, require information, and the like.[258]

The explanatory notes stated:

> *The amendments adopt a similar approach to entry to places to that provided for inspectors under the* Queensland Work Health and Safety Act 2011*. An inspector, an inspection officer or an authorised officer may enter a place that the inspector, inspection officer or authorised officer is or reasonably suspects is a workplace.*
>
> *This furthers the public interest to ensure that mines inspectors, inspection officers and authorised officers have access to all workplaces that may affect safety and health at mines.* [259]

In response to a suggestion made by the QLS that departmental guidelines be prepared and training given to provide appropriate guidance to an officer who might exercise significant powers of entry,[260] the department advised:

> *The department provides extensive training and guidelines for officers about powers of entry for inspections, audits and investigations.*
>
> *The amendments provide a similar approach to powers of entry to general workplaces under the WHS Act 2011. Access to all workplaces that may affect mine safety and health is necessary and in the public interest. Inspectors are often investigating serious incidents, and the amendments mirror the powers that otherwise exist for entering a mine site and extend those to off-site workplaces that may affect safety and health of workers at mines.*
>
> *Clauses 24 and 71 mention that the officer is required to reasonably believe that no reasonable alternative access is available and it needs to be at reasonable times. It needs to be considered to be appropriate in the circumstances. The circumstances in which an officer would exercise powers to enter a workplace other than a mine would only arise infrequently.*
>
> *Any exercise of a power of entry is reviewable by a court of judicial review, to consider whether the powers were exercised beyond the scope of the Act, for an improper purpose or in bad faith. The exercise of a power may also be reviewed in the course of a prosecution.*
>
> *Officers are part of the department and are also subject to usual oversight processes including departmental complaint processes, and within the Queensland Government as a whole including through the Ombudsman and the Crime and Corruption Commission*.[261]

Committee comment

These clauses give officers powers to enter specified places (including residential places). The committee noted the departmental advice that it is in the public interest to permit access by mines inspectors and other authorised officers to all workplaces that might affect mine safety and health.

The committee considers that the potential breach of the FLPs by the proposed clauses is justified and that the clauses balance the competing public interests.

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257 See the OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 45, referencing various published comments by the former Scrutiny of legislation Committee.

258 See generally CMSHA ss 139 to 159 and MQSHA s 136 to 156.

259 Explanatory notes, p 18.

260 Submission 9, p 2.

261 DNRME, correspondence dated 23 April 2018, pp 2-3.

3.1.1.6 Clauses 45 and 88 - immunity from proceedings

Clause 45 proposes to amend section 275AC of the CMSHA in relation to public statements on safety matters made by the Minister, chief executive, commissioner or chief inspector.

Section 275AC(1) is amended to enable information to be released about accidents or high potential incidents as well as any incident or other matter that might be relevant for a person seeking to comply with health and safety obligations. No liability (including liability in defamation) is incurred:

- by the State for anything done in good faith for the purpose of issuing a public statement, or
- by a person for publishing in good faith information that has been included in a public statement under the section.[262]

Similarly, clause 88 proposes to insert corresponding provisions in the MQSHA (by amending section 254C, including protections from liability at section 254C(4) to (6)).

Clauses 45 and 88 broaden the matters about which the specified office-holders may make public statements. The clauses also extend immunity to the State for anything done in good faith for the purpose of issuing a public statement. Further, immunity is provided for a person who publishes any information in a public statement in good faith.

This immunity raises a possible breach of FLPs. Section 4(3)(h) of the LSA provides that legislation should not confer immunity from proceeding or prosecution without adequate justification. A person who commits a wrong when acting without authority should not be granted immunity. Generally a provision attempting to protect an entity from liability should not extend to exempting liability for dishonesty or negligence. The entity itself should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for action done honestly and without negligence and if liability is removed it is usually shifted to the State.[263]

The explanatory notes stated that these provisions are justified:

> *… because the proactive release of safety information through a public statement … is imperative to minimising and or avoiding risk of injury or fatality of workers in the resources industry. It is essential that learnings following an accident or an investigation are communicated to the resources industry within a reasonable timeframe to ensure that workers are aware of any identified risks, and that the appropriate mechanisms are in place for the workers' protection. The existing sections provide that a public statement must not be issued unless it is in the public interest to do so.*
>
> *In addition, the immunity from liability is justified to ensure that safety information can be communicated through the issuing of a public statement without the fear of legal proceedings being instituted…*
>
> *… The immunity from liability is necessary … for the Minister, chief executive, commissioner or chief inspector to be able to carry out their statutory safety and health functions and not be reluctant to act through concerns about potential personal legal liability. The amendments are similar to the provision covering the publication of information by the regulator enacted by New South Wales in the Work Health and Safety (Mines and Petroleum Sites) Act 2013.*[264]

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262 Section 275AC(4) to (6).]

263 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 64.

264 Explanatory notes, p 19.

Committee comment

The immunity applies for public statements made and published in good faith. It is granted to certain specified individuals, and also extends to the State. This extension means that an aggrieved party might be left without a remedy.

The prompt public communication of the information would most likely be in the public interest in order to ensure safety. In light of the justification provided, the committee considers that there has been sufficient regard given to FLPs in this instance, including for the extension to liability of the State.

3.2 Explanatory notes

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

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

Appendix A – Submitters

Sub #	Submitter
001	Mine Managers Association of Australia
002	Mine Ventilation Australia
003	Ian Hope
004	Together Queensland Industrial Union of Employees
005	Cement, Concrete and Aggregates Australia
006	Construction, Forestry, Mining and Energy Union
007	Office of the Information Commissioner
008	Queensland Resources Council
009	Queensland Law Society

Appendix B – Officials at the public departmental briefing

Brisbane public departmental briefing – 12 April 2018

Department of Natural Resources, Mines and Energy

- Mr Russell Albury, Chief Inspector, Coal
- Mr Robert Djukic, Acting Chief Operating Officer, Resources Safety and Health
- Mr Luca Rocchi, Chief Inspector, Mineral Mines and Quarries

Appendix C – Witnesses at public hearings

Mount Isa public hearing – 18 April 2018

Australian Workers' Union

- Mr Gavin Lawrence, Organiser

Moranbah public hearing – 19 April 2018

Queensland Resources Council

- Mr Shane Hansford, Acting Manager, Health and Safety Policy

Anglo American

- Mr Neville Stanton, Principal Operator, Training

Mine Managers Association of Australia

- Mr Gavin Taylor, President
- Mr John Sleigh, Vice-President, Northern Region
- Ms Elizabeth Watts, Committee Member, Northern Region

Individual

- Mr Jason Meikle, Open-Cut Examiner and Site Safety Representative, Goonyella Riverside Mine

Brisbane public hearing – 23 April 2018

Mine Ventilation Australia

- Dr Derrick Brake, Director

Construction, Forestry, Mining and Energy Union

- Mr Greg Dalliston, Industry Safety and Health Representative
- Mr Jason Hill, Position Industry Safety and Health Representative