



Resources Safety and Health Queensland Bill 2019

Report No. 40, 56th Parliament
State Development, Natural Resources and
Agricultural Industry Development Committee
October 2019

State Development, Natural Resources and Agricultural Industry Development Committee

Chair	Mr Chris Whiting MP, Member for Bancroft
Deputy Chair	Mr Pat Weir MP, Member for Condamine
Members	Mr David Batt MP, Member for Bundaberg
	Mr James (Jim) Madden MP, Member for Ipswich West
	Mr Brent Mickelberg MP, Member for Buderim
	Ms Jessica (Jess) Pugh MP, Member for Mount Ommaney

Committee Secretariat

Telephone	+61 7 3553 6623
Fax	+61 7 3553 6699
Email	sdnraidc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/SDNRAIDC

Acknowledgements

The committee acknowledges the assistance provided by the Department of Natural Resources, Mines and Energy and the Queensland Parliamentary Service.

Contents

Abbreviations	ii
Chair’s foreword	iv
Recommendations	v
1 Introduction	1
1.1 Role of the committee	1
1.2 Inquiry process	1
1.3 Background on the Bill	1
1.3.1 CWPSC Recommendations	4
1.3.2 Project Management Office	4
1.4 Policy objectives of the Bill	5
1.5 Consultation on the Bill	5
1.6 Should the Bill be passed?	7
2 Examination of the Bill	8
2.1 Resources Safety and Health Queensland	8
2.1.1 Proposed regulatory framework for Resources Safety and Health Queensland	8
2.1.2 Inclusion of explosives legislation	9
2.1.3 Appointment of the CEO	11
2.1.4 Annual report and oversight	11
2.2 Employing office	12
2.3 Funding the Resources Safety and Health Queensland	12
2.3.1 Current funding arrangements of the regulator	13
2.3.2 Funding arrangements for Resources Safety and Health Queensland	13
2.4 Commissioner for Resources Safety and Health	15
2.4.1 Annual report	17
2.4.2 Qualifications of the commissioner	18
2.5 Advisory committees	19
2.6 Work Health and Safety Prosecutor	23
2.6.1 Resource safety expertise	23
2.6.2 Serious offence	24
2.6.3 Recommendation to prosecute	25
3 Compliance with the <i>Legislative Standards Act 1992</i>	27
3.1 Fundamental legislative principles	27
3.1.1 Rights and liberties of individuals – Clauses 19, 39, 54	27
3.1.2 Principles of natural justice – Clauses 19, 39, 54	28
3.2 Explanatory notes	29
Appendix A – Submitters	30
Appendix B – Officials at public departmental briefing	31
Appendix C – Witnesses at public hearing	32
Appendix D – Proposed new or amended offence provisions	33

Abbreviations

AEISG	Australasian Explosives Industry Safety Group
AMWU	Australian Manufacturing Workers' Union
APPEA	Australian Petroleum Production & Exploration Association
Bill	Resources Safety and Health Queensland Bill 2019
CCAA	Cement, Concrete & Aggregates Australia
CEO	Chief Executive Officer
CFMMEU	Construction, Forestry, Maritime, Mining and Energy Union
CMDLD	Coal Mine Dust Lung Diseases
CMWHS	Coal Mine Workers' Health Scheme
COAG	Council of Australian Governments
CWP	Coal Workers' Pneumoconiosis
CWPSC	Coal Workers' Pneumoconiosis Select Committee
commissioner	Commissioner for Resources Safety and Health
committee	State Development, Natural Resources and Agricultural Industry Development Committee
DNRM	Department of Natural Resources and Mines
DNRME/ the department	Department of Natural Resources, Mines and Energy
DPP	Director of Public Prosecutions
ETU	Electrical Trades Union of Employees Queensland
Explosives Act	<i>Explosives Act 1999</i>
FLPs	fundamental legislative principles
FTE	full time equivalent
HSU	Health Surveillance Unit
LSA	<i>Legislative Standards Act 1992</i>
MMAA	Mine Managers' Association of Australia

OQPC	Office of the Queensland Parliamentary Counsel
P&G	petroleum and gas
PPE	Personal Protective Equipment
PMO	Project Management Office
QAO	Queensland Audit Office
QLS	Queensland Law Society
QRC	Queensland Resources Council
RIA	regulatory impact analysis
RIS	regulatory impact statement
RSH	resources safety and health division (within the Department of Natural Resources, Mines and Energy)
RSHQ	Resources Safety and Health Queensland
Simtars	Safety in mines testing and research station, Department of Natural Resources, Mines and Energy
SSE	Site Senior Executive
UMM	Underground Mine Manager
WHS	Work Health and Safety

Chair's foreword

This report presents a summary of the State Development, Natural Resources and Agricultural Industry Development Committee's examination of the Resources Safety and Health Queensland Bill 2019.

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 Bill establishes the Resources Safety and Health Queensland as an independent statutory body responsible for regulating safety and health in the state's resources industries. The Bill seeks to create a regulatory environment for workers and operators, managed by an independent regulator, with advice, direction and oversight provided through an Advisory Council and a Commissioner.

The committee visited Jeebropilly Mine as part of the inquiry process. During discussions at the Jeebropilly Mine the committee was told that:

Safety is about not protecting resources sector workers from something.

Safety is about protecting resources sector workers for something.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also wish to thank New Hope Group for allowing the committee to visit the Jeebropilly Mine and meet with managers and employees. Thank you to our secretariat staff, the Parliamentary Service staff, and the Department of Natural Resources, Mines and Energy.

I commend this report to the House.



Chris Whiting MP

Chair

Recommendations

Recommendation 1 **7**

The committee recommends the Resources Safety and Health Queensland Bill 2019 be passed.

Recommendation 2 **11**

The committee recommends that the Chief Executive Officer of Resources Safety and Health Queensland have appropriate resource industry qualifications and experience.

Recommendation 3 **15**

The committee recommends that the Department of Natural Resources, Mines and Energy or Resources Safety and Health Queensland, if established, provide a briefing to the committee in mid-2020 on the finalised funding model for Resources Safety and Health Queensland.

Recommendation 4 **18**

The committee recommends that the annual report of the Commissioner for Resources Safety and Health be published on the Resources Safety and Health Queensland and the Department of Natural Resources, Mines and Energy websites.

1 Introduction

1.1 Role of the committee

The State Development, Natural Resources and Agricultural Industry Development 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.¹

The committee's areas of portfolio responsibility are:

- State Development, Manufacturing, Infrastructure and Planning
- Natural Resources, Mines and Energy, and
- Agricultural Industry Development and Fisheries.

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 (FLPs), and
- for subordinate legislation – its lawfulness.

The Resources Safety and Health Queensland Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee on 4 September 2019. The committee was required to report to the Legislative Assembly by 18 October 2019.

1.2 Inquiry process

On 6 September 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Thirteen submissions were received.

The committee received a public briefing on the Bill from the Department of Natural Resources, Mines and Energy (department) on 16 September 2019. A transcript is published on the committee's inquiry webpage² (see Appendix B for a list of officials).

The committee received written advice from the department in response to matters raised in submissions.

The committee held a public hearing on 25 September 2019 (see Appendix C for a list of witnesses).

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.

1.3 Background on the Bill

Following the re-identification of Coal Workers' Pneumoconiosis (CWP)³ in Queensland in 2015, the Coal Workers' Pneumoconiosis Select Committee (CWPC) was established in 2016 by the 55th Parliament. The CWPC was required to examine the legislative and regulatory arrangements of government and industry which resulted in CWP cases in Queensland and to develop solutions to address the failures of the existing system. The CWPC inquiry was a watershed.⁴

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² <https://www.parliament.qld.gov.au/work-of-committees/committees/SDNRAIDC/inquiries/current-inquiries/RSHQB2019>.

³ Coal Workers' Pneumoconiosis (CWP) is a type of pneumoconiosis, or fibrotic lung disease, solely caused by the inhalation of coal mine dust.

⁴ <https://www.parliament.qld.gov.au/work-of-committees/former-committees/CWPSC/inquiries/past-inquiries/CWPSC>

The CWPSC inquiry found that until the identification of CWP in 2015, the entire coal mining industry in Queensland (and New South Wales) believed that CWP had been eradicated in Australia, with the last cases in Queensland in the 1980s. This view was accepted by the Department of Natural Resources and Mines (DNRM), Queensland Health, the Department of Industrial Relations, coal mine operators, the Queensland Resources Council (QRC), trade unions, and coal workers. The inquiry found that all stakeholders accepted at face-value that the Coal Mine Workers' Health Scheme (CMWHS) had not identified any cases of CWP in Queensland since 1984, and therefore, the disease must have been eradicated. This belief influenced government policy and regulatory frameworks and their application, workplace health and safety policies and standards at mine sites and their operation, and the way medical professionals conducted medical examinations and made diagnostic decisions.⁵

The interim report of the CWPSC found:

... that there has been a massive systemic failure across the entirety of the regulatory and health systems intended to protect coal industry workers. Prior to the re-identification of CWP in 2015, there was an absolute failure by the DNRM, its Mine Inspectorate, SIMTARS⁶ and its Health Surveillance Unit (HSU) to properly regulate air-borne dust and to look for or identify CWP or CMDLD. The evidence suggests that Queensland Health, WorkCover and self-insurers have played a role in this failure... Mine operators have also contributed to this failure through inadequate attention to dust mitigation and suppression, poor dust monitoring, and inadequate health surveillance.⁷

The CWPSC concluded that:

It is highly unlikely that CWP was ever eradicated in Queensland. It did not 're-emerge' in 2015 but was merely re-identified, after responsible Queensland authorities failed to look for it or properly identify it for more than 30 years.⁸

Department of Natural Resources and Mines (now DNRME)

The evidence to the CWP inquiry found that the DNRM did not administer the *Coal Mining Safety and Health Act 1999* and the *Coal Mining Safety and Health Regulation 2001* to protect the safety and health of persons at mines with respect to respirable coal mine dust.⁹

- DNRM did not have or adequately maintain dust records for coal mines
- coal mines were not required to report dust monitoring results or exceedances to the inspectorate or the Commissioner for Mine Safety and Health
- there was no central repository of data about dust exposures in Queensland coal mines
- no mine operator had ever been prosecuted for breaching the regulatory dust exposure limit or failing to ensure the risk to workers arising from dust exposure was kept to an acceptable level
- the use of other enforcement powers such as Directives issued by the mining inspectorate had been inconsistent and often took many months to achieve compliance

⁵ Queensland Parliament, Coal Workers' Pneumoconiosis Select Committee, *Report No. 1, 55th Parliament, Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland – Interim Report*, p 5.

⁶ Safety in mines testing and research station.

⁷ Queensland Parliament, Coal Workers' Pneumoconiosis Select Committee, *Report No. 1, 55th Parliament, Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland – Interim Report*, p 5.

⁸ Queensland Parliament, 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*, p 66.

⁹ Queensland Parliament, Coal Workers' Pneumoconiosis Select Committee, *Report No. 1, 55th Parliament, Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland – Interim Report*, p 6.

- the Mines Inspectorate did not, in any systematic and co-ordinated manner, monitor the activities of mine operators in relation to respirable dust
- Simtars, while a world leader in mine safety research, had not conducted any research on respirable dust or its mitigation
- the Health Surveillance Unit (HSU) failed to undertake any actual health surveillance. It served as nothing more than a storage unit for miners' chest X-ray and health records.¹⁰

Queensland Health

The CWPSC heard evidence from Queensland Health that CWP was not a primary concern of that department. The CWPSC inquiry found that:

- Queensland Health had a simplistic understanding of CWP and its effects on the health and well-being of coal workers (and complete absence of recognition of other Coal Mine Dust Lung Diseases (CMDLD), typical of the level of knowledge demonstrated across the health system)
- while Queensland Health was working within the bounds of its regulatory framework at the time, if the 2004 case of CWP that was diagnosed in the public health system had been treated as a notifiable disease, it could have been recognised as a sentinel event.¹¹

Medical Professionals undertaking CMWHS medicals

The CWPSC heard evidence from a very large number of miners who had lost faith in the medical professionals who were tasked to monitor and protect their health under the CMWHS. Key factors in the failure of the health surveillance included:

- some medical professionals undertaking CMWHS medicals did not live in or near a mining town and had no clear understanding of the occupational groups employed in a mine or the work done by mine workers
- most medical professionals performing CMWHS medicals did not take complete occupational histories
- the CMWHS predominantly focused upon fitness for work assessments rather than true health screening and surveillance
- x-rays were not performed by appropriately trained staff to a suitable standard of quality and could not be read or interpreted
- chest x-rays that indicated signs of CWP were not correctly read
- coal mine workers were confirmed fit for work and continued to work underground for years after chest x-rays showed CWP
- coal mine workers were not informed of the outcomes of their medicals
- specialist medical professionals gave conflicting and confusing diagnoses and information, and

¹⁰ Queensland Parliament, Coal Workers' Pneumoconiosis Select Committee, *Report No. 1, 55th Parliament, Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland – Interim Report*, pp 6-7.

¹¹ Queensland Parliament, Coal Workers' Pneumoconiosis Select Committee, *Report No. 1, 55th Parliament, Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland – Interim Report*, p 9.

- mine operators were not informed of workers' adverse health assessments due to privacy concerns.¹²

Mine Operators

The CWPSC inquiry found that a number of mine operators had not complied with their statutory responsibilities to protect the safety and health of workers from the hazard of respirable coal mine dust. Examples included:

- regular and gross exceedances of the regulated dust limits
- limited provision of Personal Protective Equipment (PPE) in high dust environments
- limited baseline dust monitoring
- limited use or availability of dust suppression mechanisms
- poor systems for responding to dust exceedances, and
- a lack of diligence by mine operators in meeting their obligations under the CMWHS.¹³

1.3.1 CWPSC Recommendations

Given the findings of the inquiry, the CWPSC recommended the need for regulatory, structural and systemic change:

There has been a catastrophic failure of the regulatory system that was intended to preserve and protect the health of coal miners. An improved regulatory system, including a properly independent regulator and fully functional health scheme, is clearly needed. Elements of the current system work and should be maintained, but substantial structural change is necessary.¹⁴

The CWPSC recommended that an independent regulatory body, charged with responsibility for ensuring the safety and health of Queensland's mine and resource industry workers, was critical to restore public faith in the system.¹⁵ The CWPSC Report No. 2 made 68 recommendations, including 15 specific recommendations to establish an independent mine safety and health authority, as a statutory authority under its own legislation. The CWPSC proposed a model of oversight which included an independent commissioner and Board. It was proposed that the commissioner for mine safety and health should be a senior officer of the mine safety and health authority and given proper statutory independence, with the commissioner not subject to the direction of the Minister.¹⁶

1.3.2 Project Management Office

The Queensland Government's response to the CWPSC Report No. 2 supported, or supported in-principle, all 68 recommendations of the CWPSC inquiry. The government's response committed to establishing the Project Management Office (PMO) to consult with stakeholders and investigate

¹² Queensland Parliament, Coal Workers' Pneumoconiosis Select Committee, Report No. 1, 55th Parliament, Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland – Interim Report, p 10.

¹³ Queensland Parliament, Coal Workers' Pneumoconiosis Select Committee, Report No. 1, 55th Parliament, *Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland – Interim Report*, p 11.

¹⁴ Queensland Parliament, 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*, p 67.

¹⁵ Queensland Parliament, 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*, p 72.

¹⁶ Queensland Parliament, 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*, p 73.

recommendations which relate to structural changes and funding of the resources safety and health regulator.¹⁷

1.4 Policy objectives of the Bill

The explanatory notes state that the objective of the Bill is to establish a revised regulatory framework for resources safety and health in Queensland which will:

- engender workers' trust
- ensure appropriate independence and transparency
- enhance independent oversight of the performance of the regulator.¹⁸

Mr Djukic from the Department of Natural Resources, Mines and Energy (DNRME) informed the committee:

In its response tabled in the parliament, the government stated that it recognises and strongly supports the importance of ensuring appropriate independence of the regulator from the industry facilitation part of government and that it is important that a regulator operates within a governance framework that guarantees independence, transparency and appropriate ministerial oversight.

The government response stated that the regulator must be free from the direction of the mining minister or any other entity in exercising its operational or regulatory functions and that the regulator should have coverage of all mineral and energy resource industries, including mining, petroleum and gas, and explosives, to ensure consistency and efficiency and to avoid unnecessary duplication of functions within government.¹⁹

The policy objectives of the Bill are to be achieved by:

- establishing an independent statutory body called Resources Safety and Health Queensland (RSHQ) to regulate safety and health in the resources sector
- creating a Commissioner for Resources Safety and Health
- enhancing the functions of the Coal Mining Safety and Health Advisory Committee (CMSHAC) and the Mining Safety and Health Advisory Committee (MSHAC)
- establishing the RSHQ employing office.²⁰

1.5 Consultation on the Bill

The explanatory notes state that extensive consultation occurred as part of the PMO and DNRME process. Between March and May 2018, the PMO released two discussion papers and five focus papers. The PMO also undertook face-to-face meetings, held three public information forums and implemented open-house information sessions with stakeholders.²¹

¹⁷ Department of Natural Resources, Mines and Energy, *Queensland resources safety and health. Regulator and funding models*, Project Management Office Report, June 2018, p 2.

¹⁸ Explanatory notes, p 1.

¹⁹ Public briefing transcript, Brisbane, 16 September 2019, p 1.

²⁰ Explanatory notes, pp 2-6.

²¹ Explanatory notes, p 7; Department of Natural Resources, Mines and Energy, *Queensland resources safety and health. Regulator and funding models*, Project Management Office Report, June 2018, p 14.

DNRME undertook further stakeholder consultation in late 2018 on the additional components of the regulator model proposed by the PMO between September and October 2018. Targeted consultation on the draft Bill also occurred with industry and union stakeholders in July and August 2019.²²

The department stated that stakeholder feedback received through the PMO and DNRME processes informed the structure of the regulator model and assisted in the preparation of a draft Bill to establish an independent regulator.²³

Stakeholders generally commented that they were happy with the consultation process undertaken by the PMO and DNRME. Mr Johnstone from Cement, Concrete & Aggregates Australia (CCAA) told the committee:

*We have been well consulted throughout the process, including through the work of the Project Management Office, through the drafting of this bill and through our representation on the Mining Safety and Health Advisory Committee. We appreciate this opportunity to provide our view.*²⁴

The Australasian Explosives Industry Safety Group (AEISG) noted that the group had made submissions to the PMO on issues raised in its discussion papers and focus papers, but received no feedback on issues raised in these submissions.²⁵

The QRC stated that it had provided a response to the PMO in 2017, the DNRME discussion paper released in April 2018 and the DNRME consultation draft of the Bill. However the QRC was concerned that insufficient consultation had been undertaken given that the Bill will require regulatory amendment to meet the costs of the new regime and that these costs have not been fully assessed.²⁶ Ms Bertram from QRC stated:

*... QRC expressed concern that the consultation draft was inadequate for the purposes of consultation. This concern was raised because a proper analysis of the costs and benefits of the bill was not provided, particularly with regard to the creation of Resources Safety and Health Queensland. The QRC has consistently called for a RIS that clearly outlines the justification for what is proposed in the bill, as well as an estimate of the costs and benefits of this and any alternative approaches.*²⁷

Generally, there was stakeholder support for the Bill. The Australian Manufacturing Workers' Union (AMWU) noted:

The establishment of RSHQ as an independent statutory body to regulate safety and health in the resources sector is to be commended. For the first time, the approach will, in the Metalliferous Mining, Quarrying and Coal Mining sectors, see a consistent safety focussed approach applied. Such an approach will undoubtedly save lives and help to reduce the injury toll within the resources sector.

The Independent Statutory body will, for the first time, put in place a regulator focussed just on safety and health. In these resources sector injuries both physical and those which come from

²² Explanatory notes, p 7.

²³ Department of Natural Resources, Mines and Energy, Information Paper, Consultation draft Resources Safety and Health Queensland Bill 2019, July 2019, p 4.

²⁴ Public hearing transcript, Brisbane, 25 September 2019, p 24.

²⁵ Submission 10, p 2.

²⁶ Submission 9, p 2.

²⁷ Public hearing transcript, Brisbane, 25 September 2019, pp 29-30.

*long exposure to conditions such as very dusty dirty environments, will benefit from such a focussed approach.*²⁸

1.6 Should the Bill be passed?

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

The committee supports the government's commitment to maintaining the most effective regulatory framework possible to ensure that every worker in Queensland's resources industries goes home safe every day.

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

<p>Recommendation 1</p>

<p>The committee recommends the Resources Safety and Health Queensland Bill 2019 be passed.</p>

²⁸ Submission 7, p 1.

2 Examination of the Bill

This section discusses issues raised during the committee’s examination of the Bill.

2.1 Resources Safety and Health Queensland

The explanatory notes state that the Bill establishes the RSHQ as an independent statutory body responsible for regulating safety and health in the state’s resources industries. RSHQ will comprise the coal mines, mineral mines and quarries, explosives, and petroleum and gas inspectorates. RSHQ will also include the Simtars and the CMWHS.²⁹

RSHQ’s main function will be to administer the Resources Safety Acts:

- *Coal Mining Safety and Health Act 1999*
- *Mining and Quarrying Safety and Health Act 1999*
- *Explosives Act 1999*
- *Petroleum and Gas (Production and Safety) Act 2004*

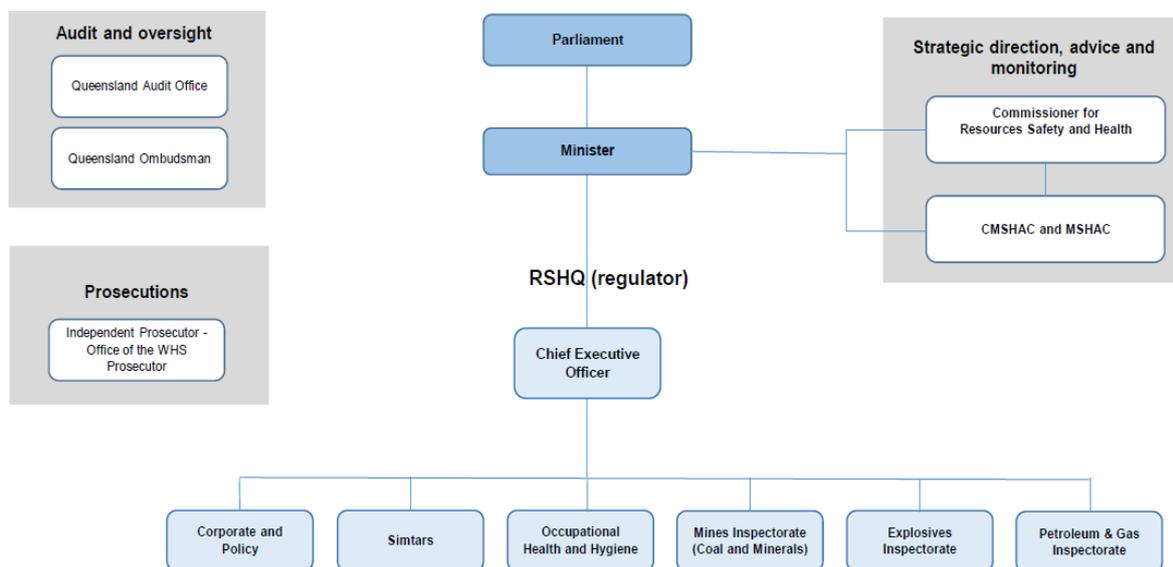
Mr Djukic from DNRME informed the committee:

*These acts constitute the legislative framework for the regulation of safety and health in Queensland’s resources industries.*³⁰

Other functions will be to protect and regulate the safety and health of persons in the resources industry, monitor legislative compliance, and carry out other commercial activities incidental to RSHQ’s main functions.³¹

2.1.1 Proposed regulatory framework for Resources Safety and Health Queensland

The Bill removes the Resources Safety and Health function out of the DNRME and places it into a standalone entity with the intent of achieving greater independence.³²



²⁹ Explanatory notes, p 3.

³⁰ Public briefing transcript, Brisbane, 16 September 2019, p 2.

³¹ Bill, cl 10.

³² Department of Natural Resources, Mines and Energy, Information Paper Consultation draft Resources Safety and Health Queensland Bill 2019, July 2019.

The explanatory notes state:

Establishing RSHQ as a statutory body, rather than a statutory authority, ensures that RSHQ will not be part of, or subject to, oversight from an administering department, such as DNRME. This will ensure the function of protecting workers is separate from the government's functions of growing and facilitating mining and exploration projects and the resources sector as a whole.³³

Submitters supported a standalone regulatory so that the 'department that is issuing leases and promoting the mining of the product is not the department regulating the way in which it is taken out'.³⁴

All submitters were generally supportive of the concept of independent statutory regulator. Mr Paull from the Australian Petroleum Production & Exploration Association (APPEA) commented:

In terms of the concept of an independent safety regulator, we are not opposed to that in principle.³⁵

However, while the concept of an independent regulatory was supported, the Bill's ability to achieve the policy objectives was questioned by the QRC:

The factors leading to those systemic failures would still have existed under the legislative framework proposed by the Bill. It is unreasonable to attribute what is fundamentally a failure in the risk management process to the structure of the regulator model, and there is no reason to think that a statutory regulatory body would have led to a different outcome.³⁶

The PMO report stated that:

... structural changes do not, in themselves, protect workers from risks to their safety and health. The management and control of workplace risks involves, among other things, targeted intervention coupled with robust monitoring and review, directed at continuous improvement. The organisational structure, including sound governance arrangements, can provide the framework to facilitate these outcomes... It is the PMO's belief that the proposed changes provide for the creation of a clear and comprehensible regulatory environment for workers and operators, managed by an independent regulator, with advice, direction and oversight provided through an Advisory Council and a Commissioner.³⁷

2.1.2 Inclusion of explosives legislation

The Bill defines the *Explosives Act 1999* (Explosives Act) as a resources safety act and as such brings explosives legislation under the authority of RSHQ.

The AEISG raised their concerns regarding the inclusion of the explosives legislation within the scope of the RSHQ, given that the Bill is heavily focused upon resources safety and health and that explosives legislation in Queensland is not industry safety and health legislation, rather it is focussed on public safety and security.³⁸

Additionally, AEISG noted that explosives legislation regulates all types of explosives activities including import and export of explosives via Queensland ports, explosives manufacturing and storage sites, transport of explosives on public roads in Queensland, sale of explosives to all authorised persons and

³³ Explanatory notes, p 3.

³⁴ Mr Sleigh, Mine Managers' Association of Australia, public hearing transcript, Brisbane, 25 September 2019, p 2.

³⁵ Public hearing transcript, Brisbane, 25 September 2019, p 19.

³⁶ Submission 9, p 3.

³⁷ Department of Natural Resources, Mines and Energy, *Queensland resources safety and health. Regulator and funding models*, Project Management Office Report, June 2018, p 7.

³⁸ Submission 10, p 4; *Explosives Act 1999*, s 2A.

use of explosives by all industry sectors. Therefore, the explosives legislation and the inspectorate are primarily involved with explosives activities in the public arena.³⁹

Like all other non-mining industries, the explosives industries operate under Work Health and Safety (WHS) legislation administered by WorkCover Queensland as well as the *Explosives Act 1999*. Mr Sheridan from AEISG informed the committee of the extent of the industry beyond the supply of explosives to the resource sector:

... simply because the industry supplies products to the resource sector does not make ours a resource safety act. Most of our activities happen in the public arena. We import explosives through Queensland ports. We transport explosives on public roads. We store explosives in magazines that are not resource areas; they are private or government-owned areas. We sell explosives to people who are authorised to use them or have access to them. Some industries supply products to retail outlets. Kids' toy caps come under the explosives legislation. Christmas bonbons are under the explosives legislation. There is a broad range of products—ammunition and all of those things—that are part of the life cycle. The life cycle goes from import and manufacture through transport, storage, sale, use, disposal, export perhaps—some industries do export explosives through Queensland ports, as well. It is a fairly broad industry.⁴⁰

Additionally, AEISG informed the committee that as a result of a Council of Australian Governments (COAG) decision it had been working nationally as part of a strategic issues group to harmonise explosives legislation across Australia.⁴¹

In response to these concerns DNRME noted that the functions and powers of RSHQ, including to administer the Resources Safety Acts, which includes the Explosives Act, enable the continuation of existing arrangements of the regulator being responsible for regulating safety and health in the coal mines, mineral mines and quarries, explosives, and petroleum and gas sectors in Queensland.⁴² Additionally, DNRME noted:

The Bill proposes that the regulator, RSHQ, will regulate the safety and health of workers in the mining and quarrying and explosives industries. The department considers keeping the expertise of the mines and explosives inspectorates together under a single regulator will offer safety benefits to workers and efficiencies to industry by ensuring consistency in regulatory practices where applicable.⁴³

Mr Djukic from DNRME clarified:

To begin with, the co-location, if you like, of the explosives regulator with the mining and petroleum regulator is not new. That has existed for some time within the current division of the department. In a sense it is a continuation of the status quo... the mining industry is one of the biggest consumers of explosives products and ... when explosives are used on a mining lease they come under the jurisdiction of the mining legislation. However, the co-location of the Explosives Inspectorate with the Mines Inspectorate ensures that that expertise can be lent to those matters in handling explosives. We have had on a number of occasions joint inspection and investigation activities undertaken by the Mines Inspectorate and the Explosives Inspectorate. Essentially, it

³⁹ Mr Sheridan, Australasian Explosives Industry Safety Group, public hearing transcript, Brisbane, 25 September 2019, p 7.

⁴⁰ Mr Sheridan, Australasian Explosives Industry Safety Group, public hearing transcript, Brisbane, 25 September 2019, p 7.

⁴¹ Mr Sheridan, Australasian Explosives Industry Safety Group, public hearing transcript, Brisbane, 25 September 2019, p 6.

⁴² Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, p 16.

⁴³ Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, p 16.

ensures the ability for that efficiency and that transfer of expertise in dealing with those matters and it ensures that the right expertise is available for issues arising on mine sites.⁴⁴

Committee comment

The committee notes that there are administrative and technical synergies in co-locating the explosives regulator with the mining and petroleum regulator, and that this is currently the practice within DNRME.

2.1.3 Appointment of the CEO

The Bill provides for the appointment of a chief executive officer (CEO) of RSHQ to be made by the Governor in Council. The CEO will be responsible for ensuring the effective administration and operation of RSHQ and the performance of its functions, and managing the organisational unit.⁴⁵ Mr Djukic from DNRME outlined the role of the RSHQ CEO:

The bill provides for this role to be the accountable officer for the performance of RSHQ. The CEO is the officer through whom the statutory body acts and is necessary to manage and give effect to the body's operations. This role is accountable for all of the obligations and duties of the statutory body, including obligations under financial accountability and other public sector legislation that would apply to RSHQ as a government entity. The bill establishes the CEO as having accountability for governing RSHQ rather than a board of directors.⁴⁶

The CEO will be required to comply with obligations and requirements under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*, and to establish internal control structures and governance frameworks which will enable the CEO and RSHQ to meet these obligations.⁴⁷

Committee comment

Given the unique and complex nature of the resource sector, the committee believes that it would be appropriate for the CEO of RSHQ to have relevant resources sector experience and industry qualifications.

Recommendation 2

The committee recommends that the Chief Executive Officer of Resources Safety and Health Queensland have appropriate resource industry qualifications and experience.

2.1.4 Annual report and oversight

Clause 28 of the Bill requires that RSHQ must include in its annual report prepared under s 63 of the *Financial Accountability Act 2009*:

- details of the functions it performed during the year
- information about how efficiently and effectively RSHQ performed its functions, including identifying key achievements and financial and non-financial performance
- details of any interest disclosed by the CEO to the Minister under cl 22(a)
- details of any action authorised by the Minister under cl 22(b)

⁴⁴ Public hearing transcript, Brisbane, 25 September 2019, p 37.

⁴⁵ Explanatory notes, p 3.

⁴⁶ Public hearing transcript, Brisbane, 25 September 2019, p 36.

⁴⁷ Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, p 1.

- details of each direction given by the Minister under cl 13 during the financial year to which the report relates
- details of action taken by RSHQ because of a direction from the Minister.⁴⁸

2.2 Employing office

The Bill establishes an employing office to engage staff under the *Public Service Act 2008* to undertake functions for RSHQ. The employing office will be constituted separately to RSHQ, comprising an executive officer and staff of the employing office.

The explanatory notes state that the employing office will be a unit of public administration under the *Crime and Corruption Act 2001*, and a statutory body under the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982*.⁴⁹

The creation of an employing office will enable RSHQ to undertake its role, while ensuring existing employment arrangements for staff continue under the *Public Service Act 2008*.⁵⁰ Mr Djukic from DNRME advised that in establishing an employing office the rights and entitlements of existing staff as public servants, transferring to RSHQ, are preserved under the *Public Service Act 2008*:

*The reason for establishing an employing office is because certain functions carried out by Simtars and the explosives reserves have a community service component, but they are commercial in nature in that they collect fees for service. The High Court has found that statutory bodies that undertake some commercial functions are held to be trading corporations, which means that ordinarily they would come under the Fair Work Act. In order to preserve the rights and entitlements of existing staff as public servants it is necessary to establish this employing office. It is to enable the staff to continue under Public Service arrangements.*⁵¹

The current size of the resources safety and health division (RSH) within DNRME is 265 full-time equivalents (FTE). RSHQ is anticipated to be established at the same size by transferring the DNRME RSH to the new statutory body.⁵² The committee were informed that:

*The transfer of staff will happen outside of the bill. It is a separate process. That would be under the Public Service Commission—the current process for transfer of staff, similar to a machinery-of-government change.*⁵³

RSHQ's corporate services will not be provided by DNRME or any another government department, but will be performed in-house and only outsourced where capacity limitations require it, or where it is most efficient to do so.⁵⁴

2.3 Funding the Resources Safety and Health Queensland

The explanatory notes state that in the 2019-20 State Budget, the government committed funding of \$2 million over 2019-20 to establish RSHQ.⁵⁵ The cost of running the statutory body is anticipated to be the same as the current cost of running RSH within the department of about \$1.5 million per year.

⁴⁸ Explanatory notes, p 13.

⁴⁹ Explanatory notes, p 13.

⁵⁰ Explanatory notes, p 4.

⁵¹ Public briefing transcript, Brisbane, 16 September 2019, p 4.

⁵² Department of Natural Resources, Mines and Energy, answers to questions taken on notice, 16 September 2019, p 3.

⁵³ Ms McPherson, Department of Natural Resources, Mines and Energy, public briefing transcript, Brisbane, 16 September 2019, p 10.

⁵⁴ Department of Natural Resources, Mines and Energy, answers to questions taken on notice, 16 September 2019, p 3.

⁵⁵ Explanatory notes, p 7.

Further costs associated with implementation will be met by RSHQ through the existing funding arrangements of the safety and health fee and the petroleum and gas fee.⁵⁶

2.3.1 Current funding arrangements of the regulator

The PMO report into RSHQ funding models outlined the current funding of RSH.⁵⁷

Mine safety and health activities of the regulator are funded by the safety and health fee (also known as the levy). The safety and health fee was introduced in 2008 to recover the costs of safety and health services provided by the Queensland Government to the mining, quarrying, explosives and fireworks industries. The safety and health fees applies to all operations regulated under the Coal Mining Safety and Health Regulation 2017, the Mining and Quarrying Safety and Health Regulation 2017 and the Explosives Regulation 2017.

The legislation provides that the responsible person (e.g. mine or quarry operator or explosives authority holder) must pay the safety and health fee to cover the cost of the department's activities carried out for the purposes of safety and health for mining operations or explosives during each financial year.

The safety and health fee is calculated on the number of workers in the industry and the budgeted cost of services. Operations with five or fewer workers are currently exempt from paying the fee.

Estimated revenue collection by safety and health fee in 2016–17

Tier	Fee rate (\$)	No. of operators	Revenue (\$ million)
1–5 employees	0.00	2050	–
6–10 employees	107.10	66	0.06
11+ employees	850.00	141	36.34
		2257	36.4

The revenue from the safety and health fee fully funds the coal mines, mineral mines and quarries, and explosives inspectorates; funds approximately 50% of Simtars activities; and partially funds business strategy services and corporate support costs of the RSH division.

A petroleum and gas fee (P&G fee) is also payable under the Petroleum and Gas (Production and Safety) Regulation 2004. This fee funds the P&G Inspectorate and partially funds business strategy services and corporate support costs which relate to P&G activities. The P&G fee was not considered as part of the PMO review and is not covered in this Report.⁵⁸

2.3.2 Funding arrangements for Resources Safety and Health Queensland

The Bill does not propose amendments to the safety and health fee or the petroleum and gas safety and health fee. However, the government is separately progressing necessary adjustments to the safety and health fee to support the RSHQ. Mr Djukic from DNRME noted:

⁵⁶ Mr Djukic, Department of Natural Resources, Mines and Energy, public briefing transcript, Brisbane, 16 September 2019, p 6.

⁵⁷ Department of Natural Resources, Mines and Energy, *Queensland resources safety and health. Regulator and funding models*, Project Management Office Report, June 2018, p 16.

⁵⁸ Department of Natural Resources, Mines and Energy, *Queensland resources safety and health. Regulator and funding models*, Project Management Office Report, June 2018, p 16.

*The mechanisms for resourcing the regulator will be the same, so through an industry sourced fee. There is further work being done to refine that to ensure that it is capable of sustaining reforms that have been made.*⁵⁹

Several submitters raised concerns that a funding model for RSHQ had not been finalised and provided to stakeholders for consultation prior to the Bill being considered.⁶⁰ Ms Bertram from QRC noted:

*There presently is a levy... Normally if there are additional costs there is a reason for that in that improvements are going to be delivered. We have been calling for a RIS so that we can see where those improvements are needed and are to be delivered and what the costs associated with that are.*⁶¹

Given that the safety and health fee is calculated on the number of workers in the industry some submitters raised concerns in regard to the use of safety and health fee based upon FTE to provide a stable funding source for RSHQ. Mr Hill from the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) stated:

*An open-cut mine has 3,000 to 4,000 people working on it. With automation coming in, there is the potential for that to drop down and then you will lose your funding model... You do not want to see, in the future, a model that struggles to exist because there is a downturn. We all know that that can happen overnight. If it has the potential to fail because of funding, in 10 years' time we will end up back here saying the model failed and we will have people who are sick or being injured because of an insufficient or inadequate model, because of funding.*⁶²

Similarly, Mr Paull from APEA commented on the changeable nature of the resource sector and the need to protect regulatory funding from this movement:

*We did have a big increase in activity earlier in the decade. We are probably now more in a steady state. Things can change but ... the regulator will need a consistent source of funding so that its funding does not go up and down in line with those cycles.*⁶³

Several industry submitters raised concerns that the funding model for RSHQ should not result in cross-subsidisation of regulatory services across the various resource sectors. APEA highlighted the petroleum and gas (P&G) industry's lower occupational risk factors and good safety record and argued that therefore P&G should not hold the same regulatory cost burden as the coal mining sector:

*Whilst the recent six fatalities in the mining sector in Queensland are tragic and deeply concerning, it is worth pointing out that there are key differentiators between mining and oil and gas operations, thus a single legislative approach might not be appropriate. For example, in 2018 there were no industrial fatalities in petroleum and gas operations anywhere in Australia. We have sustained one fatality in oil and gas in Queensland in the past 4 years and, whilst this is clearly one too many, we would contest the notion that we have a problem ...*⁶⁴

Similarly, AEISG raised concerns in regard to industry cross-substitution of RSHQ:

*The explosives industries are concerned that the inclusion of this public safety legislation within RSHQ will result in the industry contributing to the funding of a body which offers it no services.*⁶⁵

⁵⁹ Public briefing transcript, Brisbane, 16 September 2019, p 6.

⁶⁰ Public hearing transcript, Brisbane, 25 September 2019.

⁶¹ Public hearing transcript, Brisbane, 25 September 2019, p 30.

⁶² Public hearing transcript, Brisbane, 25 September 2019, p 14.

⁶³ Public hearing transcript, Brisbane, 25 September 2019, p 19.

⁶⁴ Submission 11, p 2.

⁶⁵ Submission 10, p 5.

It was proposed that given that mining, quarries and P&G are diverse industries the funding model for RSHQ should quarantine funds for each sector:

Those are distinct operations in many ways, so whatever funding model is produced should deal with those industries separately. For mining, tonnage might be a sensible approach but obviously that will not work for oil and gas, so I think you would want to have a different model. To some extent, you would want to have quarantined buckets of money for each of those functions.⁶⁶

Section 153 of the Petroleum and Gas (Safety) Regulation 2018 defines the purpose of the safety and health fee paid under P&G safety legislation. The fee is restricted to covering safety and health activities for the petroleum industry. Similarly, s 178(1) of the Explosives Regulation 2017 applies the fee payable under that legislation to safety and health activities for explosives. Fees collected for P&G and explosives can only be used for the regulation of those respective industries and cannot be used to cross-subsidise regulation of other industries.

Committee comment

The committee notes that the department did not undertake a regulatory impact analysis (RIA) or regulatory impact statement (RIS). As submitters noted, assessing the impacts of proposed regulatory policy options is an integral part of good policy making processes.⁶⁷ However, the committee acknowledges the significant consultation undertaken by the PMO and DNRME during this process and that the Office of Best Practice Regulation has determined that the level of impact assessment and consultation undertaken in the development of the regulator and funding model is equivalent to that required when preparing a RIS, therefore the proposal was excluded from further regulatory impact assessment.⁶⁸

The development of an appropriate and equitable funding model for RSHQ is complex. The committee notes that the government is separately progressing necessary adjustments to the safety and health fee in relation to coal mining. The committee suggests that the department continue to develop the necessary funding models through a transparent and inclusive process.

Recommendation 3

The committee recommends that the Department of Natural Resources, Mines and Energy or Resources Safety and Health Queensland, if established, provide a briefing to the committee in mid-2020 on the finalised funding model for Resources Safety and Health Queensland.

2.4 Commissioner for Resources Safety and Health

The explanatory notes state that the Bill establishes the role of the Commissioner for Resources Safety and Health, with functions across all resources sectors. The position will provide independent monitoring, review and advisory functions distinct from RSHQ. The role will replace the existing Commissioner for Mine Safety and Health position.

The functions of the commissioner will be to:

- advise the Minister on matters relating to resources safety and health
- respond to Ministerial requests for advice
- fulfil the roles of chairperson of the coal mining safety and health advisory committee and the mining safety and health advisory committee engage with representatives of the explosives and petroleum and gas sectors about promoting and protecting safety and health

⁶⁶ Mr Paull, Australian Petroleum Production & Exploration Association, public hearing transcript, Brisbane, 25 September 2019, p 19.

⁶⁷ Mr Anderson, Queensland Resources Council, public hearing transcript, Brisbane, 25 September 2019, p 33.

⁶⁸ Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, p 12.

- monitor, review and report to the Minister on RSHQ's performance.⁶⁹

Mr Djukic from DNRME noted that:

*Stakeholder feedback during consultation indicated a preference to retain a commissioner role, in particular as a source of providing advice to the minister and to monitor and review the performance of the regulator... The commissioner will be appointed under the resources safety and health Queensland act rather than the Public Service Act. The commissioner will be required to act independently, impartially and in the public interest.*⁷⁰

The following table sets out the current functions of the commissioner under the *Coal Mining Safety and Health Act 1999* and the functions of the commissioner under the Bill.

Table 1: Comparison of functions of the Commissioner for Resources Safety and Health under the Coal Mining Safety and Health Act 1999 and the Resources Safety and Health Queensland Bill 2019

<i>Coal Mining Safety and Health Act 1999 – s 73C</i>	Resources Safety and Health Queensland Bill - cl 58
(a) to advise the Minister on mine safety and health matters generally	(1)(a) advising the Minister on matters relating to safety and health in the resources sector
(b) to fulfil the roles of chairperson of the coal mining safety and health advisory committee and chairperson of the mining safety and health advisory committee under the <i>Mining and Quarrying Safety and Health Act 1999</i> ; and	(b) responding to requests by the Minister for advice on particular matters, including, for example, the strategic direction of RSHQ
(c) to monitor and report to the Minister and to Parliament on the administration of provisions about safety and health under this Act and other mining legislation; and	(c) fulfilling the following roles— (i) chairperson of the coal mining safety and health advisory committee (ii) chairperson of the mining safety and health advisory committee
(d) to perform the functions given to the commissioner under the provisions of this Act and other mining legislation	(d) engaging with representatives of the explosives sector, and petroleum and gas sector, about promoting and protecting the safety and health of persons who may be affected by the operation of those sectors
	(e) monitoring, reviewing, and reporting to the Minister on the performance of RSHQ's functions
	(2) The commissioner also has the functions given to the commissioner under this Act or another Act
	(3) The commissioner must, in performing the commissioner's functions, act independently, impartially and in the public interest

⁶⁹ Explanatory notes, p 5.

⁷⁰ Public briefing transcript, Brisbane, 16 September 2019, p 2.

Submitters supported the retention of an independent commissioner to provide advice to the Minister and provide oversight on the performance of the resources safety and health regulator.⁷¹ Mr Johnstone from CCAA informed the committee:

With regard to the Commissioner for Resources Safety and Health, we are supportive of the establishment of an independent commissioner. We believe it would provide an important oversight role for the management of health and safety regulation and a point of industry expertise whilst remaining independent from the regulator. We also believe it is important that the position continues its role of providing advice directly to the minister.

2.4.1 Annual report

Some submitters sought to clarify that the commissioner had legislative authority to independently oversee the RSHQ and report to the Minister.⁷²

The current reporting requirements under the *Coal Mining Safety and Health Act 1999* s 73E (1) require that the commissioner must prepare and give to the Minister a report on the performance of the department in regulating mine safety.⁷³

The explanatory notes outline that, under cl 64 of the Bill, the commissioner must prepare and give the Minister a written report about the operations of the commissioner during each financial year, and as soon as practicable after it is given to the Minister, the Minister must publish the report on a Queensland Government website.

The report must include:

- details of the functions performed by the commissioner during the year
- information about how efficiently and effectively the commissioner performed the commissioner's functions, including identifying key achievements and financial and non-financial performance
- details of any interest disclosed by the commissioner under cl 57(a)
- details of any action authorised by the Minister under cl 57(b)
- details of each direction given by the Minister under cl 63 during the financial year to which the report relates, and details of action taken by the commissioner because of the direction.⁷⁴

Concerns were raised in relation to the shift in the focus and jurisdiction of the commissioner to report on the performance of the RSHQ.⁷⁵ In response to concerns that the commissioner is required to only report on the commissioner's performance, Mr Djukic, from DNRME stated:

... proposed clauses 64(3) (a) and (b), they state that the report must include details of the functions performed by the commissioner. If you then have regard to the commissioner's functions under proposed clause 58(1) (e), it includes 'monitoring, reviewing, and reporting to the Minister on the performance of RSHQ's functions'. As part of the commissioner's annual report on their own activities, they will have to detail that aspect of monitoring and reviewing the performance of RSHQ's functions.⁷⁶

⁷¹ Ms Bertram, Queensland Resources Council, public hearing transcript, Brisbane, 25 September 2019, p 30.

⁷² Mr Hill, Construction, Forestry, Maritime, Mining and Energy Union, public hearing transcript, Brisbane, 25 September 2019, p 13.

⁷³ *Coal Mining Safety and Health Act 1999*, s 73E(1).

⁷⁴ Explanatory notes, p 21.

⁷⁵ Queensland Resources Council, submission 9.

⁷⁶ Public hearing transcript, Brisbane, 25 September 2019, p 40.

Additionally, Mr Djukic confirmed:

*The commissioner will sit independent to the regulator and provide that review and monitor function to report to the parliament, to the public, that the regulator is discharging its functions, enforcing the regulations and the act effectively. The commissioner, if you like, is the independent watchdog or ombudsman type role that will provide that review and monitor function.*⁷⁷

In addition to the oversight to be provided by the commissioner, the proposed regulatory framework for the RSHQ includes further oversight by the Queensland Audit Office (QAO) and the Queensland Ombudsman.⁷⁸ The PMO reported that:

*The PMO suggests that additional and independent assurance and oversight may be provided through the Queensland Audit Office (QAO) undertaking annual financial audits of the authority, similar to other public sector entities. In addition, the QAO may also be utilised to conduct performance audits which would include identifying whether organisational objectives are being achieved. This function would supplement the proposed annual performance monitoring undertaken by the Commissioner. The Queensland Ombudsman would also continue to provide an independent avenue for those with concerns or complaints relating to the authority to be investigated.*⁷⁹

Committee comment

The explanatory notes outline that under cl 64 of the Bill the commissioner must prepare and give the Minister a written report about the operations of the commissioner during each financial year, and as soon as practicable after it is given to the Minister, the Minister must publish the report on a Queensland Government website. The committee considers that the annual report should be published on the RSHQ and DNRME websites.

Recommendation 4

The committee recommends that the annual report of the Commissioner for Resources Safety and Health be published on the Resources Safety and Health Queensland and the Department of Natural Resources, Mines and Energy websites.

The committee notes that the PMO and the proposed regulatory framework for the RSHQ includes that additional oversight be provided by the QAO and the Queensland Ombudsman.

2.4.2 Qualifications of the commissioner

Clause 49 states that to be appointed as the commissioner, a person must have:

- a professional qualification relevant to the resources industry, and professional experience in safety and health in the resources sector; or
- professional experience in senior operational positions relating to the management of safety and health in the resources sector, and demonstrated competence in the management of safety and health in the resources sector.⁸⁰

A number of submitters emphasised the importance of relevant professional qualifications for the commissioner:

We definitely believe that the commissioner needs to have relevant industry experience and typically Queensland based experience of how the coalmining industry or the resources sector

⁷⁷ Public briefing transcript, Brisbane, 16 September 2019, p 2.

⁷⁸ See page 8 of this report.

⁷⁹ Department of Natural Resources, Mines and Energy, *Queensland resources safety and health. Regulator and funding models*, Project Management Office Report, June 2018, p 4.

⁸⁰ Bill, cl 49.

*works in Queensland. For the coalmining industry, we definitely believe that the chief inspector needs to hold a first-class ticket of competency and a lot of inspectors need to hold a mine manager's certificate of competency as well.*⁸¹

Similarly, Mr Sleigh, from the Mine Managers' Association of Australia (MMAA) highlighted the need for industry specific experience.

*We think from a coalmining point of view it is important that the person in the position of commissioner has an understanding of (a) the Queensland mining industry and (b) the highest risk aspect of the resources industry, the coalmining industry.*⁸²

2.5 Advisory committees

The explanatory notes state:

The Bill amends the Coal Mining Safety and Health Act 1999 and the Mining and Quarrying Safety and Health Act 1999 to enhance the functions of the Coal Mining Safety and Health Advisory Committee and Mining Safety and Health Advisory Committee.

*The advisory committees will provide advice and information to the Minister about critical risks to safety and health in the mining and quarrying sectors, and on RSHQ's performance. The advisory committees will also develop and evaluate progress against five-year strategic plans and develop action plans to achieve measurable targets. The strategic plans will identify, quantify and prioritise safety and health issues facing the mining and quarrying sectors... The advisory committees form an important part of the accountability framework in the Bill.*⁸³

Currently, the mining advisory committees play a key role in improving safety and health outcomes for mine workers. CSMHAC and MSHAC advise the Minister on the safety and health of resources workers by:

- reviewing the effectiveness of coal mining safety legislation (Act, Regulations and recognised standards)
- reviewing the effectiveness of risk management in coal mining operations
- establishing the coal mining competencies that are required to perform certain roles or tasks.

The Bill amends the functions of the CSMHAC and MSHAC.⁸⁴ The Bill omits s 76(3) and (4) of the *Coal Mining Safety and Health Act 1999* and s 67(3) and (4) of the *Mining and Quarrying Safety and Health Act 1999*, to insert a new s 76A and s 67A.

A comparison of functions of the advisory committees under the *Coal Mining Safety and Health Act 1999*, the *Mining and Quarrying Safety and Health Act 1999*, and the Bill is set out in Table 2.

⁸¹ Mr Hill, Construction, Forestry, Maritime, Mining and Energy Union, public hearing transcript, Brisbane, 25 September 2019, p 11.

⁸² Public hearing transcript, Brisbane, 25 September 2019, p 2.

⁸³ Explanatory notes, p 6.

⁸⁴ The Bill amends the *Coal Mining Safety and Health Act 1999*, cl 74-79 and the *Mining and Quarrying Safety and Health Act 1999*, cl 105-106.

Table 2: Comparison of functions of the advisory committees under the Coal Mining Safety and Health Act 1999, the Mining and Quarrying Safety and Health Act 1999, and the Resources Safety and Health Queensland Bill 2019

<i>Coal Mining Safety and Health Act 1999</i> ⁸⁵ <i>Mining and Quarrying Safety and Health Act 1999</i> ⁸⁶	Resources Safety and Health Queensland Bill 2019
(1) The primary function of the committee is to give advice and make recommendations to the Minister about promoting and protecting the safety and health of persons at coal mines	Section 76(1), after 'coal mines'— Section 67(1), after 'mines'— <i>insert</i> — and persons who may be affected by coal mining operations
(2) Without limiting subsection (1), the committee must discharge its primary function by periodically reviewing— (a) the effectiveness of this Act, regulations and recognised standards; and (b) the effectiveness of the control of risk to any person from coal mining operations.	Section 76(2), from 'reviewing'— Section 67(2), from 'reviewing'— <i>omit, insert</i> — reviewing the effectiveness of the control of risk to any person from coal mining operations.
(3) The committee also has the function of recognising, establishing and publishing— (a) the competencies accepted by it as qualifying a person to perform the tasks prescribed under a regulation; or (b) the safety and health competencies required to perform the duties of a person under this Act	Section 76(3)— Section 67(3)— <i>omit</i>
(4) In periodically reviewing effectiveness under subsection (2), the committee must have regard to the following— (a) the risk management performance of the coal mining industry; (b) the appropriateness of recognised standards; (c) education, training, and standards of competency within the coal mining industry; (d) the implementation of recommendations from inspectors' investigations, coroners' inquests, boards of inquiry, and other sources; (e) the promotion of community knowledge and awareness of safety and health in the coal mining industry; (f) any other matter referred to it by the Minister.	Section 76 (4)— Section 67 (4)— <i>omit</i>

⁸⁵ Section 76(3) and (4).

⁸⁶ Section 67(3) and (4).

	<p>After section 76—</p> <p>After section 67—</p> <p><i>insert—</i></p> <p>(a) recognising, establishing and publishing the following competencies—</p> <p>(i) the competencies accepted by the committee as qualifying a person to perform the tasks prescribed by regulation;</p> <p>(ii) the safety and health competencies required to perform the duties of a person under this Act;</p>
	(b) developing a 5-year strategic plan for improving the safety and health of persons at coal mines and persons who may be affected by coal mining operations;
	(c) periodically evaluating, and at least once each year updating, the 5-year strategic plan;
	(d) developing action plans to achieve measurable targets set in the 5-year strategic plan;
	(e) obtaining information from RSHQ to assess the fulfilment of the 5-year strategic plan and the action plans mentioned in paragraph (d);
	(f) identifying and prioritising critical risks to the safety and health of persons at coal mines and persons who may be affected by coal mining operations;
	(g) providing advice to the coal mining industry about the risks mentioned in paragraph (f);
	(h) providing information to the Minister about the performance of RSHQ.

Concerns were raised that the ability for CSMHAC and MSHAC to review the effectiveness of the Resources Safety Acts, regulations and recognised standards would be reduced under the Bill, given that the advisory committees will now have a strategic function. Mr Hill from the CFMMEU informed the committee:

Currently the advisory committees are made up of two CFMMEU representatives, one ETU, three QRC, inspectors and then an independent chair. The main focus of that is to advise the minister and to review the effectiveness of the legislation. That currently works well. It performs well. I cannot see why there would be any need to change the role that the advisory committee undertakes at the moment. It performs its functions fairly well, I believe. We are on the verge of a review of the legislation being undertaken.⁸⁷

⁸⁷ Public hearing transcript, Brisbane, 25 September 2019, p 11.

DNRME noted:

*Amendments to clauses 79 and 106 do not preclude the advisory committees' ability to review the effectiveness of legislation. The Bill provides that the primary function of the advisory committees is to give advice and make recommendations to the Minister about promoting and protecting the safety and health of persons at mines and persons who may be affected by mining operations. The intent of the Bill is that the advisory committees take on a strategic role by focusing on critical and emerging risks. In doing so, it is open to the advisory committees to advise the Minister about any and all appropriate measures to address risk, which may include legislative and other measures.*⁸⁸

The AMWU noted their support for the new strategic focus of the advisory committees:

*In particular we support these two bodies developing a 5-year strategic plan for improving the safety and health of persons at mines and persons who may be affected by mining operations. This is an excellent example of actively involving the very people who work in the resources sector and so are exposed to the very real risks such an industry throws up.*⁸⁹

The QRC supported the clarification of the roles of the advisory committees:

*The QRC has supported, and continues to support, the retention of the advisory committees and the tripartite approach overall. The Bill generally lays out these functions more clearly than the current legislation, however it does not guarantee that the committees will be consulted in the development of policy for resources safety and health.*⁹⁰

The P&G sector, which is currently not represented on the advisory committees, requested that the current arrangements regarding industry consultation and contribution be maintained:

*We note that existing committees for minerals and coal mining will report direct to the new Commissioner. The petroleum industry would be seeking its own, ongoing, independent representation to the commissioner. In this regard APPEA supports continuation of the existing consultative processes for petroleum as they have proven effective.*⁹¹

DNRME noted that the Bill would facilitate the continuation of current arrangements for P&G and the explosives industries:

The Bill enables representation from the petroleum industry to the Commissioner. Clause 58(4) provides that the Commissioner will have the function of engaging with representatives of the explosives and petroleum and gas sectors about promoting and protecting the safety and health of persons who may be affected by the operation of those sectors.

*The existing arrangements for non-legislative consultative arrangements for the petroleum and gas sector are proposed to continue.*⁹²

The MMAA suggested that the membership of the CSMHAC include a practicing Site Senior Executive (SSE) or underground mine manager (UMM).⁹³

DNRME noted that the membership of the tripartite advisory committee is outside the scope of the Bill. However, given that s 80(5) of the *Coal Mining Safety and Health Act 1999* provides that in selecting a person for appointment, the Minister must consider the following in relation to the person: (a) breadth of experience in the coal mining industry; (b) demonstrated commitment to promoting

⁸⁸ Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, p 14.

⁸⁹ Submission 7, p 3.

⁹⁰ Submission 9, p 5.

⁹¹ Australian Petroleum Production & Exploration Association, submission 11, p 2.

⁹² Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, p 17.

⁹³ Submission 4.

safety and health standards in the coal mining industry; and (c) practical knowledge of the coal mining industry and of relevant legislation, this would not preclude the appointment of a practicing SSE or UMM under the current arrangements.⁹⁴

2.6 Work Health and Safety Prosecutor

The explanatory notes state that the Bill amends the Resources Safety Acts and the *Work Health and Safety Act 2011* to use the Work Health and Safety Prosecutor (WHS Prosecutor) to prosecute offences under the Resources Safety Acts.

The WHS Prosecutor will have sole responsibility for prosecuting serious offences under the Resources Safety Acts. Other offences may be prosecuted by the WHS Prosecutor or the CEO of RSHQ. The Bill inserts a new definition of 'serious offence' in each of the Resources Safety Acts.⁹⁵

2.6.1 Resource safety expertise

The AMWU supported the utilisation of the WHS Prosecutor and stated that the use of one office to prosecute serious offences would provide for the development of expertise in this area.⁹⁶ DNRME advised that employing the WHS Prosecutor to bring prosecutions under the Resources Safety Acts will provide legal expertise, with a dedicated office consisting of legal practitioners with experience and expertise in prosecutorial functions. Additionally, it was argued that the WHS Prosecutor will provide focused expertise and consistent standards and a single reference for prosecutions which are serious offences.⁹⁷

However, several submitters requested further information as to how the WHS Prosecutor would achieve the best safety outcomes for the resources industries. CCAA questioned how the WHS Prosecutor would have the expertise to make expert, consistent, efficient and effective decisions for matters pertaining to the extractive industry.⁹⁸ Similar matters were raised by stakeholders in the coal mining and explosives sectors.⁹⁹

The Queensland Law Society (QLS) considered that there was merit in requiring the WHS Prosecutor to seek and have regard to the views of the Commissioner for Resources Safety and Health given the commissioner's role and specialised knowledge:

While QLS supports the need for independent decision-making by the WHS Prosecutor, there would be value in requiring the WHS Prosecutor to seek and have regard to the views of the Commissioner on the public interest in prosecuting (or not prosecuting) an individual matter. Given the Commissioner's role and specialist knowledge, this will assist in ensuring the most appropriate use of resources in conducting prosecutions in alignment with the public interest and may also avoid prosecutions which may be against the public interest.¹⁰⁰

Similarly, Mr Hansford from QRC argued:

I think the reason we raised the commissioner as being that person is to have a good oversight, a good understanding of all the issues within industry and therefore the right person to judge what type of compliance response is most appropriate... We were concerned that, going outside

⁹⁴ Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, p 5.

⁹⁵ Explanatory notes, 6.

⁹⁶ Submission 7.

⁹⁷ Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, pp 2-3.

⁹⁸ Submission 1.

⁹⁹ Mine Managers' Association of Australia, submission 4; Collieries' Staff and Officials Association, submission 5; Queensland Resources Council, submission 9; Australasian Explosives Industry Safety Group, submission 10.

¹⁰⁰ Submission 8.

*of the resources industry to make that decision, the Work Health and Safety Prosecutor is not appropriate... A compromise might be that the commissioner has to be consulted before a prosecution is launched.*¹⁰¹

In response to the suggestion that the WHS Prosecutor seek advice from the commissioner in considering whether a matter is in the public interest when deciding whether to prosecute this matter, DNRME stated:

*The Commissioner will not have operational responsibilities or regulatory functions under the Bill; specifically, the Commissioner will not have a role in prosecution action. The involvement of the Commissioner in regulatory and compliance activities has the potential to impact the Commissioner's independence and objectivity in monitoring and reviewing the effectiveness of regulatory activities.*¹⁰²

Mr Djukic from DNRME argued that 'a requirement for the WHS Prosecutor to seek advice from the commissioner could impact the independent decision-making of the WHS Prosecutor'.¹⁰³

Similar to s 230(3) of the *Work Health and Safety Act 2011*, the Bill provides that in deciding whether to prosecute, the WHS Prosecutor must have regard to any guidelines issued under s 11 of the *Director of Public Prosecutions Act 1984*. The Director's Guidelines issued by the Director of Public Prosecutions provide guidance to achieve consistency, efficiency, effectiveness and transparency in prosecutorial decisions. Fundamental to the guidelines is a two tiered test that prosecution should only be initiated where there is sufficient evidence and the public interest requires prosecution.¹⁰⁴

2.6.2 Serious offence

The Bill inserts a new definition of 'serious offence' in each of the Resources Safety Acts.¹⁰⁵ The AMWU supports the inclusion of the definition of serious offence and notes that this will bring the resources safety legislation into line with the *Work Health and Safety Act 2011*.¹⁰⁶

The Bill sets out the meaning of serious offence as:

- (a) (i) caused multiple deaths; or*
- (ii) caused death or grievous bodily harm; or*
- (iii) caused bodily harm; or*
- (iv) involved exposure to a substance that is likely to cause death or grievous bodily harm;*
or
- (b) an offence prescribed by regulation for this paragraph.*¹⁰⁷

Several submitters raised concerns with regard to the threshold test for the use of 'bodily harm'. QLS noted that the definition of serious offence includes 'bodily harm', which is defined in the Criminal Code as 'any bodily injury which interferes with health or comfort'. The definition in the Bill was considered to be broad. QLS stated that:

This would have the effect that any offence involving even a minor injury (eg a rolled ankle or minor finger cut) would be considered a 'serious offence', which could only be prosecuted by the

¹⁰¹ Public hearing transcript, Brisbane, 25 September 2019, p 34.

¹⁰² Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, p 10.

¹⁰³ Public hearing transcript, Brisbane, 25 September 2019, p 36.

¹⁰⁴ Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, pp 2-3.

¹⁰⁵ Explanatory notes, p 6.

¹⁰⁶ Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, p 8.

¹⁰⁷ See cls 83, 95, 111, 125.

*WHS Prosecutor. Therefore, only administrative or procedural breaches which do not involve any injury could be prosecuted by the CEO or other authorised person.*¹⁰⁸

QLS proposed that to address this, consideration be given to limiting the class of serious offences in respect of which individuals can request a prosecution to those contained in sub-clauses (i) and (ii) of the definition of 'serious offence' (i.e. those involving fatalities and grievous bodily harm).¹⁰⁹

Mr Hill from the CFMMU provided examples on the need to set the threshold test appropriately:

*Definitely it would be for fatalities and any serious incidents that are determined by the commissioner or the chief inspector. The way we report now, you might have a person who goes into hospital and has an overnight stay, but that is only due to a lack of medical staff available to take appropriate X-rays and issues like that. That would be classified as a serious incident, because of the definition and that they were an in-patient.*¹¹⁰

The department advised that the relevant offence provisions are not amended by the Bill, which merely categorises them as serious. It will be a matter for the WHS Prosecutor to determine what is in the public interest in bringing a prosecution for a serious offence, with the severity of an injury one consideration in applying this test. In response to these concerns Mr Djukic from DNRME stated:

*It does not introduce a new element in terms of a threshold for determining whether or not to prosecute... The bill provides that in deciding whether or not to initiate proceedings the WHS Prosecutor must have regard to guidelines issued by the Director of Public Prosecutions. Those guidelines state that in order to bring a prosecution there must be sufficient evidence and it must be in the public interest. The question of whether or not something is in the public interest is an objective one. It takes into consideration a broad range of factors.*¹¹¹

2.6.3 Recommendation to prosecute

Currently, under the s 256 of the *Coal Mining Safety and Health Act 1999* the following persons may recommend to the commissioner that a prosecution for an offence against the Act be brought:

- an inspector
- an industry safety and health representative
- a site senior executive.

Several witnesses raised concerns that the Bill broadens the definition of persons who may make a request to the WHS Prosecutor that a prosecution be brought in relation to the Act or omission. Mr Hill from the CFMMEU stated:

*Section 256 allows for three positions. There are ourselves, which is ISHR—there are three of us. I think you have the inspectors and SSEs. It is more controlled. For example, if I make a recommendation to prosecute, I have to do an investigation and I have to supply the relevant evidence to the commission in order for the commissioner to decide whether it is going to go ahead. Under the proposed model, anyone can make a recommendation to prosecute. That just opens it up for someone to say, 'I'm not happy. I want to make a recommendation.'*¹¹²

¹⁰⁸ Submission 8, p 3.

¹⁰⁹ Submission 8, p 3.

¹¹⁰ Mr Hill, Construction, Forestry, Maritime, Mining and Energy Union, public hearing transcript, Brisbane, 25 September 2019, p 13.

¹¹¹ Mr Djukic, Department of Natural Resources, Mines and Energy, public hearing transcript, Brisbane, 25 September 2019, p 38.

¹¹² Mr Hill, Construction, Forestry, Maritime, Mining and Energy Union, public hearing transcript, Brisbane, 25 September 2019, p 15.

Similarly, QRC raised concerns regard amendments to s 256 of the *Coal Mining Safety and Health Act 1999*:

*The QRC is also concerned that the ability for a “person” to request the WHS Prosecutor to consider bringing a prosecution for a serious offence, with appeal rights if that request is denied is too broad a right, builds unrealistic expectations, could be used mischievously and could lead to an excessive administrative burden. In the case of a fatality, it is quite likely that at least one grieving family member would wish to seek prosecution, even if there was little basis for bringing any charges.*¹¹³

DNRME noted that the ability to request the WHS Prosecutor to bring a prosecution for a serious offence is consistent with similar provisions contained in s 231 of the *Work Health and Safety Act 2011*, which is available to all persons. The department also noted that, in the absence of this provision, a person is still not precluded from requesting any prosecuting authority consider prosecution of an offence.¹¹⁴

¹¹³ Queensland Resources Council, submission 9, p 6.

¹¹⁴ Department of Natural Resources, Mines and Energy, correspondence dated 24 September 2019, p 15.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

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

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

The committee examined the application of the FLPs to the Bill.

It is considered that cls 19, 39 and 54 raise issues of FLP. The following table provides a summary of these issues, which are then discussed in detail.

The Bill also includes one offence provision which is set out at Appendix D.

Clauses	Issues of Fundamental Legislative Principle
Clauses 19, 39 and 54 allow the Governor in Council to remove the CEO of RSHQ, executive officer of RSHQ or Commissioner of Resources Safety and Health from office.	It is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. These provisions do not appear to provide a review of the Governor in Council’s decision, through a merits or informal internal review.
Clauses 19, 39 and 54 allow the Governor in Council to remove the CEO of RSHQ, executive officer of RSHQ or Commissioner of Resources Safety and Health from office.	Legislation should be consistent with the principles of natural justice, including the principles that a person is given an adequate opportunity to present their case to the decision-maker. These provisions do not appear to make provision for the CEO, executive officer or Commissioner to present their case to the Governor in Council.

3.1.1 Rights and liberties of individuals – Clauses 19, 39, 54

Section 4(3)(a) of the LSA considers if the rights, obligations and liberties of individuals dependent on administrative power is sufficiently defined and subject to appropriate review.

Clause 19 allows the Governor in Council, on the Minister’s recommendation, to remove the CEO of RSHQ from office if the Minister is satisfied the CEO –

- (a) *has engaged in –*
 - (i) *inappropriate or improper conduct in an official capacity; or*
 - (ii) *inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the office; or*
- (b) *has become incapable of performing the CEO’s functions; or*
- (c) *has neglected the CEO’s duties or performed the CEO’s functions incompetently.*

Clause 39 allows the Governor in Council, on the Minister’s recommendation, to remove the executive officer of RSHQ on the same grounds as in cl 19 above.

Clause 54 allows the Governor in Council, on the Minister’s recommendation, to remove the Commissioner of Resources Safety and Health on the same grounds as in cl 19.

None of the above clauses provide for a review of the Governor in Council's decision, through a merits or informal internal review.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states, 'Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review'.¹¹⁵

Clauses 19, 39 and 54 provide for the Governor in Council (on the Minister's recommendation) to remove the CEO and executive officer of RSHQ and Commissioner of Resources Safety and Health if certain conditions are not met. While review rights under the Judicial Review Act 1991 have not been excluded from this Bill, an internal/informal review process has not been specifically provided for.

The *Judicial Review Act 1991* permits review of decisions made by Governor in Council (with the relevant Minister named as defendant) but such review is of the legality of the decision, not its merits.

However, it is noted that the threshold for exercising the power to remove a CEO/commissioner/executive officer from office is set high, being exercised by the Governor in Council, on the recommendation of the Minister, and only where the Minister is satisfied that the CEO/commissioner/executive officer has engaged in inappropriate or improper conduct, become incapable of performing their functions, or have neglected their duties or performed their functions incompetently.

This threshold test would presumably lessen the likelihood that an internal review of the decision would be pursued in any event, with an aggrieved CEO/commissioner/executive officer who believed they had been unfairly removed from office probably more likely to pursue formal legal options such as judicial review or a civil remedy (depending on the terms of their employment contract).

3.1.2 Principles of natural justice – Clauses 19, 39, 54

Section 4(3)(b) of the LSA requires that a bill be consistent with principles of natural justice.

As noted above, cl 19 allows the Governor in Council, on the Minister's recommendation, to remove the CEO of RSHQ from office if the Minister is satisfied the CEO has engaged in inappropriate or improper conduct in an official capacity; inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the office; has become incapable of performing their functions; or has neglected their duties or performed their functions incompetently.

Clause 39 allows the Governor in Council, on the Minister's recommendation, to remove the executive officer of RSHQ on the same grounds, and cl 54 allows the removal of the Commissioner of Resources Safety and Health, also on those grounds.

Legislation should be consistent with the principles of natural justice which are developed by the common law and incorporate the following three principles:

- (1) something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker
- (2) the decision maker must be unbiased

¹¹⁵ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 18.

- (3) procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.¹¹⁶

There is no 'show cause' process specifically provided for, such as would ordinarily give the individual an opportunity to present their case, respond to allegations, provide an excuse or defence, or offer up a mitigating factor/circumstance to explain why they should not be removed from office. This is inconsistent with the principles of natural justice.

The explanatory notes are silent on this issue.

Committee comment

The committee notes the absence of a 'show cause' process prior to the removal from office of the CEO/commissioner/executive officer under cls 19, 39 and 54 and that this was not flagged in the explanatory notes.

Although there is no specific 'show cause' process provided for in the Bill, it is expected that, for dismissal from such a senior position, reasons would ordinarily be provided to advise the CEO/commissioner/executive officer as to which of the grounds for removal was being relied upon in exercising the power, and that the officer would be (informally, outside of an official 'show cause' process) invited to provide reasons why they should not be removed from their position.

3.2 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It 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.

¹¹⁶ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, p 25.

Appendix A – Submitters

Sub #	Submitter
001	Cement, Concrete & Aggregates Australia
002	Shay Dougall
003	Dr Geralyn McCarron
004	Mine Managers' Association of Australia Incorporated
005	Collieries' Staff and Officials Association
006	Australian Institute of Health & Safety
007	Australian Manufacturing Workers' Union
008	Queensland Law Society
009	Queensland Resources Council
010	Australasian Explosives Industry Safety Group Inc
011	Australian Petroleum Production & Exploration Association Limited
012	Construction, Forestry, Maritime, Mining & Energy Union
013	Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

Appendix B – Officials at public departmental briefing

Department of Natural Resources, Mines and Energy

- Robert Djukic, Chief Operating Officer, Resources Safety and Health
- Naomi McPherson, Acting Director, Resources Safety and Health Policy

Appendix C – Witnesses at public hearing

Mine Managers' Association of Australia

- Mr John Sleigh, Vice President, Northern Region

Australian Explosives Industry Safety Group

- Mr Robert Sheridan, Chief Executive Officer

Construction, Forestry, Maritime, Mining & Energy Union

- Mr Jason Hill, Industry Safety and Health Representative

Australian Petroleum Production and Exploration Association

- Mr Rob Hirst, Chair of APPEA Queensland Health, Safety, and Operations Committee and Australia Pacific LNG Health, Safety and Environment Manager
- Mr Matthew Paull, Queensland Policy Director

Cement, Concrete & Aggregates Australia

- Mr Aaron Johnstone, State Director

Queensland Resources Council

- Mr Kirby Anderson, Director, Strategy and External Relations
- Ms Judith Bertram, Deputy Chief Executive and Policy Director, Safety and Community
- Mr Shane Hansford, Policy Manager, Safety and Health

Department of Natural Resources, Mines and Energy

- Mr Robert Djukic, Chief Operating Officer, Resources Safety and Health
- Ms Naomi McPherson, Acting Director, Resources Safety and Health Policy

Appendix D – Proposed new or amended offence provisions

[NOTE: ONE PENALTY UNIT = \$133.45]

Clause	Offence	Proposed maximum penalty
66	<p>Disclosure of information</p> <p>A person must not disclose information concerning the personal affairs of a person or commercially sensitive information obtained by the person in the administration of this Act, unless the disclosure is made—</p> <ul style="list-style-type: none"> (a) with the consent of the person from whom the information was obtained; or (b) in the administration of this Act; or (c) in a proceeding under this Act or a report of the proceeding; or (d) in a proceeding before a court in which the information is relevant to the issue before the court. <p>Maximum penalty—100 penalty units.</p>	\$1,334.50