Parliamentary Committees



Mineral and Energy Resources and Other Legislation Amendment Bill 2020

Report No. 46, 56th Parliament
State Development, Natural Resources and Agricultural Industry Development Committee
March 2020

State Development, Natural Resources and Agricultural Industry Development Committee

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Contents

Abbreviations

AEISG	Australasian Explosives Industry Safety Group
AIHS	Australian Institute of Health and Safety
AMWU	Australian Manufacturing Workers' Union
APPEA	Australian Petroleum Production & Exploration Association
Bill	Mineral and Energy Resources and Other Legislation Amendment Bill 2020
Brady Review / Review	Brady Heywood, *Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019*, December 2019
CCA	conduct and compensation agreement
CCAA	Cement, Concrete & Aggregates Australia
CEO	Chief Executive Officer
CFMMEU	Construction, Forestry, Maritime, Mining and Energy Union
CMO	Coal Mining Operator
CMSHA / CMSH Act	*Coal Mining Safety and Health Act 1999*
committee	State Development, Natural Resources and Agricultural Industry Development Committee
Criminal Code	*Criminal Code Act 1899*
DNRME / the department	Department of Natural Resources, Mines and Energy
EDO	Environmental Defenders Office
ETU	Electrical Trade Union of Employees Queensland
Explosives Act	*Explosives Act 1999*
FLPs	fundamental legislative principles
HRO	High Reliability Organisation
IM	Industrial Manslaughter
Minister	Minister for Natural Resources, Mines and Energy
MMAA	Mine Managers' Association of Australia
MQSHA / MQSH Act	*Mining and Quarrying Safety and Health Act 1999*
OCE	open cut examiner

OQPC	Office of the Queensland Parliamentary Counsel
P&G	petroleum and gas
P&G Act	*Petroleum and Gas (Production and Safety) Act 2004*
PRCP	progressive closure and rehabilitation plan
QLS	Queensland Law Society
QRC	Queensland Resources Council
SSE	site senior executive
SSM	site safety manager
UQ legislative review	University of Queensland, Minerals Industry Safety and Health Centre, *Expert Legal Assessment CMSHA, CMSHR and Recognised Standards*, published 8 November 2019
WHSA / WHS Act	*Workplace Health and Safety Act 2011*
WHS legislation	*Work Health and Safety Act 2011*, *Electrical Safety Act 2002*, and *Safety in Recreational Water Activities Act*

Chair's foreword

This report presents a summary of the State Development, Natural Resources and Agricultural Industry Development Committee's examination of the Mineral and Energy Resources and Other Legislation Amendment Bill 2020.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill's compliance in relation to the *Human Rights Act 2019*.

The committee held public hearings in Brisbane and in Moranbah to hear the views of those directly employed in the resource sector. The committee also visited Broadmeadow Mine and had the opportunity to experience the underground mining environment and discuss safety and health in the resources industry with those at the site. The committee was greatly impressed with the safety culture of Broadmeadow Mine and thank all those who met with the committee or facilitated this visit.

Of crucial importance in drafting this report were the informal representations to committee members outside of the formal hearing at Moranbah, which have been as informative as – and contradictory to - the written representations received by the committee. Informal testimony focused on the ability to raise matters of safety in mines without suffering workplace retribution, and the capacity or reluctance of workers to raise these matters depending on the permanence or security of their employment.

As Chair, I am supportive of the committee's request that the Minister address the issue of reprisals, and I note the suggestions of regulatory reform by submitters that extend permanency of employment through the workforce.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill, appeared at a public hearing or assisted the committee with its site visit in Moranbah. I also thank the Department of Natural Resources, Mines and Energy and our Parliamentary Service staff.

I commend this report to the House.

Chris Whiting MP
Chair

Recommendations

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
- Agricultural Industry Development and Fisheries.

Section 93 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
- the compatibility with the *Human Rights Act 2019*
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

The Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly and referred to the committee on 4 February 2020. The committee was required to report to the Legislative Assembly by 27 March 2020.

On 7 February 2020, the committee invited stakeholders and subscribers to make written submissions on the Bill. Eighty submissions were received (a list of submitters is provided at Appendix A).

The committee received a public briefing about the Bill from the Department of Natural Resources, Mines and Energy (DNRME, the department) on 17 February 2020 (see Appendix B for a list of officers who appeared at the public briefing).

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

The committee held public hearings in Brisbane and Moranbah on 3 March 2020 (a list of witnesses who appeared at the hearings is at Appendix C).

The submissions, correspondence from DNRME, and transcripts of the briefing and hearings are available on the committee's webpage.[2]

1.3 Background

The Queensland mining industry is a major contributor to the state's resource exports and a significant source of employment. As at January 2020, the overall value of Queensland resources exports was

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/1MEROLAB2020

$71.5 billion, almost double the export value in 2009 of $36 billion.[3] As at June 2019, a total of 53,084 people were employed in the resources industry, split across each subsector as follows:

- 37,290 in coal mining
- 14,034 in minerals mines
- 1,760 in quarries.[4]

1.3.1 Current mining safety and health legislative framework

A series of coal mine disasters in the 1980s and early 1990s in Australia marked a trend away from a more traditional, prescriptive style of legislation toward the development of risk-based legislative frameworks to address health and safety in the mining industries.[5] In Queensland two mine safety Acts were introduced in 1999 that were based on the risk-based approach: the *Coal Mining Safety and Health Act 1999* (CMSHA) and the *Mining and Quarrying Safety and Health Act 1999* (MQSHA). Both Acts establish strategies to identify hazards, risk assessment and control, a self-regulation approach and capacity for consultation between works and employers. The Acts are underpinned by regulations, codes of practice, recognised standards and guidance notes.[6] They operate parallel to, but not overlapping, legislation relating to mainstream occupational health and safety, enabled by the *Workplace Health and Safety Act 2011* (WHSA).

The success of the risk-based approach to underpin a legislative framework relies on four fundamental components: a controlled work environment; fit for purpose equipment; safe work practices; and competent people.[7] The risk-based approach assumes that a mine has all of these components in place all of the time. Inspections by the regulator (DNRME), under a risk-based model, are designed to identify systemic deficiencies in the implementation of the model and not to direct the mine on risk controls. Some identified flaws in this approach are:

- inspections only sample parts of the safety and health management system at a point in time, yet the requirement is for continuous operation of the four components. An inspector cannot know about or cover all of the activities on a mine, even in a small time slice let alone continuously
- inspectors and workers must be adequately trained and possess an understanding of hazard identification and possess and maintain sufficient technical competencies.[8]

Mine safety expert Professor Neil Gunningham, when commenting on the New Zealand Pike River mine disaster of November 2010, said this of risk-based legislation:

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3 Brady Heywood, *Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019*, December 2019 (Brady Review), p 11, citing Department of Natural Resources, Mines and Energy Strategic Economics Unit - Queensland Resources Exports.

4 Brady Review, p 11, citing information provided by the Department of Natural Resources, Mines and Energy.

5 Andrew Clough, *Mining legislation – the Queensland perspective*, 15th Coal Operators' Conference, University of Wollongong, The Australasian Institute of Mining and Metallurgy and Mine Managers' Association of Australia, 2015, p 24.

6 Andrew Clough, *Mining legislation – the Queensland perspective*, 15th Coal Operators' Conference, University of Wollongong, The Australasian Institute of Mining and Metallurgy and Mine Managers' Association of Australia, 2015, p 24.

7 Department of Natural Resources, Mines and Energy, *Queensland Mine Safety Framework: Decision Regulatory Impact Statement*, March 2018, p A-11.

8 Department of Natural Resources, Mines and Energy, *Queensland Mine Safety Framework: Decision Regulatory Impact Statement*, March 2018, p A-11.

The bottom line is that risk management is only as good as the people doing it. If you don't have the right input from the right people, it's useless.[9]

According to the explanatory notes to the Bill, the current offences in the CMSHA, the MQSHA, the *Explosives Act 1999* (Explosives Act) and the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) are insufficient where actions or omissions involving criminal negligence (recklessness or gross negligence) result in worker fatalities.[10]

1.3.2 Fatalities within the mining and quarrying industries

Prior to January 2000, a total of 1,451 workers had lost their lives in the Queensland mining and quarrying industry since records began in 1877.[11] Forty-nine fatalities occurred between January 2000 and January 2020.[12] There have been eight fatalities in Queensland mines and quarries since 29 July 2018.

Responding to the recent fatalities, the Honourable Dr Anthony Lynham, Minister for Natural Resources, Mines and Energy, commissioned in 2019 three expert independent reviews into how Queensland's resources industry can 'work towards being free of fatalities and serious harm'.[13] Tabled in the Legislative Assembly on 6 February 2020, the reviews consist of:

- University of Queensland, Minerals Industry Safety and Health Centre, *Expert Legal Assessment CMSHA, CMSHR and Recognised Standards*, published 8 November 2019 (UQ legislative review)
- University of Queensland, Minerals Industry Safety and Health Centre, *Expert Legal Assessment CMSHA, CMSHR and Guidelines*, published 6 December 2019
- Dr Sean Brady, *Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019*, for the Department of Natural Resources, Mines and Energy, published December 2019 (Brady Review).

1.3.3 The Brady Review

On 8 July 2019 the Minister for Natural Resources, Mines and Energy announced an expert review would be undertaken to identify changes needed to improve health and safety in Queensland mines and quarries. The review was instigated after five fatalities occurred in Queensland mines in the 2018-19 financial year, and a sixth fatality on 7 July 2019.[14] Dr Sean Brady, a forensic structural engineer who specialises in identifying the cause of defects and failures in the construction and engineering sectors,[15] was selected to conduct the review.

During the course of the committee's inquiry a number of stakeholders attributed the findings and recommendations of the Brady Review in their submissions and evidence on the proposed reforms in the Bill. An overview of the review's findings and recommendations, and stakeholder comments are provided below.

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9 Department of Natural Resources, Mines and Energy, *Queensland Mine Safety Framework: Decision Regulatory Impact Statement*, March 2018, p A-10 - A-11, citing comments from Prof Neil Gunningham, 'Mining safety model far from rock solid', 10 April 2014, *New Zealand Herald*.

10 Explanatory notes, p 1.

11 Brady Review, p 18.

12 Brady Review, p 18; there have been two additional fatalities since the commission of the Brady Review.

13 Hon Dr Anthony Lynham, Minister for Natural Resources, Mines and Energy, Queensland Parliament, Record of Proceedings, 4 Feb 2020, p 36.

14 Hon Dr Anthony Lynham, Minister for Natural Resources, Mines and Energy, Queensland Parliament, Record of Proceedings, 4 Feb 2020, p 36.

15 Brady Heywood, https://www.bradyheywood.com.au/

1.3.3.1 Findings of the Brady Review

The Brady Review analysed the 47 fatalities by year from 2000 up until July 2019. By considering the fatalities in this period as a cumulative sum of fatal accidents, the Review found that the industry has periods where a significant number of fatalities occur over a short period of time, in quick succession, followed by periods where few to no fatalities occur. According to the findings of the Review, this will have the effect of returning the overall average yearly fatality rate to approximately 2.4 per year,[16] and indicates evidence of a 'fatality cycle'. The Review stated:

> *From 2000 onwards the industry has continued to cycle between 0 and 6 fatalities. The cycle further suggests that periods with few to no fatalities should be viewed as simply part of the fatality cycle - they are not evidence of the industry becoming safer over the long term. Instead, further fatalities should be expected as the cycle continues.*[17]

Notably, the Review found that the fatality cycle is an indication that, 'the industry goes through periods of increasing and decreasing vigilance', and stated:

> *If the industry continues to take a similar approach to safety, using the same philosophy and methodologies as have been adopted over the past 19½ years, then similar safety outcomes should be expected. There will be periods where a significant number of fatalities occur, followed by periods where there are few to none. Past behaviour suggests that in the order of 12 fatalities are likely to occur over any 5 year period.*[18]

The Brady Review undertook an analysis of the causes of each of the 47 fatalities within the review period. A number of key findings were identified:

- human error alone did not cause the majority of the fatalities, 17 of the 47 fatalities involved no human error *at all* on the part of the deceased
- a lack of task specific training and/or competencies for the tasks being undertaken was attributed to 17 of the fatalities, with a further nine of the deceased lacking in adequate training
- in 32 of the 47 fatalities, supervision was required for the tasks being undertaken, and 25 of those 32 fatalities involved inadequate or absent supervision
- 17 of the fatalities involved a lack of training *and* inadequate or absent supervision
- the majority of the fatalities involved at least one failed or absent control that could have prevented the fatality
- 10 fatalities involved known faults, where individuals were aware of them but no action was taken
- nine fatalities had known near misses occur prior to the fatality
- the age of the deceased worker was not statistically significant
- there were two cases in which the worker's pre-existing medical condition may have compromised their ability to survive the incident and two cases where a worker's poor eyesight or hearing may have led to a lack of awareness of potential hazards
- three of the fatalities involved the use of alcohol or drugs, but in two of these cases played no causative role in the fatality.

The Brady Review found that the majority of fatalities were the result of interactions between factors across various levels in the mine site, for example individual, supervisory and organisational. Many

[16] Brady Review, p 21.

[17] Brady Review, p 22.

[18] Brady Review, p 22.

were preventable, and there was rarely a single cause. The fatalities were 'typically the result of a combination of banal, everyday, straightforward factors, such as a failure or absence of controls, a lack of training, and/or absent or inadequate supervision'.[19] The Review concluded that:

> *This is likely to be an uncomfortable finding for many: there is a tendency to assume that bad outcomes must have equally bad causes, especially when a fatality occurs. This was not the case – there were few smoking guns.*[20]

1.3.3.2 Recommendations of the Brady Review

The Brady Review made 11 recommendations. Recommendations 1 to 5 identify matters for the mining and quarrying industry to recognise and addresses the key causal factors identified in the Review, namely:

- the industry recognise that is has a fatality cycle (recommendation 1)
- the industry recognise that the causes of fatalities are typically a combination of a number of factors (recommendation 2)
- the industry focus on ensuring workers are appropriately trained for specific tasks they are undertaking (recommendation 3)
- the industry focus on ensuring workers are appropriately supervised (recommendation 4)
- the industry focus on ensuring the effectiveness and enforcement of controls to manage hazards (recommendation 5).

Recommendations 6 and 9 call on the industry to:

- adopt the principles of High Reliability Organisational theory, an approach which focusses on identifying the incidents that are precursors to larger failures and use this information to prevent these failures from occurring
- shift focus from Lost Time Injuries to Lost Time Injury Frequency Rate as a safety indicator, which measures industry safety rather than how the industry manages injuries after they occur.

The Brady Review made recommendations specific to the regulator (DNRME) to adopt new practices. Recommendations 7, 8, 10 and 11 call on the regulator to:

- play a key role in collating, analysing, identifying, and proactively disseminating the lessons learned from the incident and fatality data it collects from the industry (recommendation 7)
- develop a new and greatly simplified incident reporting system that is easy to use by those in the field, that is unambiguous, and that aims to encourage open reporting, rather than be an administrative burden to reporting (recommendation 8)
- adopt the Serious Accident Frequency Rate as a measure of safety in the industry, which will accurately reflect how many people are getting seriously injured to require admission to hospital for treatment (recommendation 10)
- adopt the High Potential Incident Frequency Rate as a measure of reporting culture in the industry, rather than as a measure of the level of safety in the industry. High Potential Incident reporting should be encouraged in order to better ensure early warning signals of impending incidents and fatalities are captured (recommendation 11).[21]

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19 Brady Review, p 33.

20 Brady Review, p 33.

21 Brady Review, pp 74-77.

1.3.3.3 Stakeholder comments

Stakeholders were supportive of the recommendations of the Brady Review. For example, general manager and Site Senior Executive Mr Ian Cooper cited the Brady Review and was particularly supportive of recommendation 9:

> *To improve safety in the mining industry there needs to be a shift from the focus on lagging statistics (Lost Time Injuries, Restricted Work Injuries) as a measure of how well the industry is performing with safety. At a meeting in 2005 with the Mines Inspectorate regarding industry safety reporting, it was strongly suggested that the focus of the monthly reporting for mines move towards the leading indicators for safety such as number of risk assessments conducted, number of safety procedures update, number of critical safety audits conducted, number of safety observations and toolbox talks conducted as a way to shift the focus to managing the inputs to safety to control hazards and prevent incidents rather than a focus on trying to manage the outcomes after the incidents have occurred.*[22]

A number of stakeholders expressed concern that the Bill's proposed reforms were not consistent with the Review's recommendations.

Acknowledging recommendation 6, Mr Cooper noted that adopting a punitive approach would not provide any benefit to the legislative framework.[23]

The Australasian Institute of Mining and Metallurgy (AusIMM) encouraged the government to reconsider the proposed reforms in light of the recommendations made in the UQ legislative review or the Brady Review.[24]

Site Senior Executive Ms Liz Watts noted that the Brady Review did not recommend the adoption of industrial manslaughter legislation as a measure to improve industry safety.[25]

BHP noted that recommendation 5 of the Brady Review would require site-based personnel to be empowered to report hazards, identify risks and openly share safety information. BHP submitted:

> *If the industrial manslaughter offence becomes law without expressly excluding SSEs (and those that report to them), the anxiety held by SSEs could force the prioritisation of legally defensive behaviours.*[26]

Dr Anne Smith questioned the authority of the findings of one independent review as the basis for legislative reform, over broad consultation with all stakeholders, including 'injured mine workers, family members, on-site mine workers, the many highly qualified, experienced and respected mine safety professionals who have dedicated their entire careers to the mining sector'.[27] However in support of the Review's findings, Mr Ian McFarlane of the Queensland Resources Council (QRC) noted that permanency of employment is not a significant factor in terms of mine safety, stating that: 'at no stage in any part of the Brady review was there any reference to casually employed SSEs, for want of a better word, having any worse a safety reporting system than a permanent employee'.[28]

1.3.3.4 Department response

The Brady Review was published in December 2019, prior to the introduction of the Bill. The Bill's supportive documentation (explanatory notes and subsequent departmental briefing to the

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22 Mr Ian Cooper, submission 48, p 2.

23 Mr Ian Cooper, submission 48, p 4.

24 Submission 50, p 5.

25 Submission 52, p 2.

26 Submission 56, p 2.

27 Submission 42, pp 1-2.

28 Public hearing transcript, Brisbane, 3 March 2020, p 15; submission 54, p 2.

committee) does not refer to the Brady Review or its impact, if any, on the formation of the Bill's proposed legislative reforms.

During the public briefing on the Bill on 17 February 2020, Mr Robert Djukic from DNRME observed that the Review did not consider the reporting culture in the mining industry in terms of contractor versus employee statutory office holders.[29] Further, at the public hearing in Brisbane on 3 March 2020, Mr Mark Stone from DNRME stated of the Brady Review:

> *The Brady review into fatal accidents indicated likely underreporting of safety and health incidents and the need to maximise the probability of reporting.*
>
> *…*
>
> *In his recommendations, Brady discusses high reliability organisation theory which considers a safety culture to be a reporting culture. Government has moved quickly to introduce amendments that ensure statutory office holders can raise safety issues and make reports about dangerous conditions without fear of reprisal or impact on their employment.*[30]

The Brady Report defines a High Reliability Organisation (HRO) as one that is driven by key characteristics, including a continued preoccupation with failures rather than successes so as not to breed complacency, a reluctance to simplify interpretations and write off incidents too simply, a sensitivity to operations, a commitment to resilience, and a deference to expertise. An organisation operating with HRO status is not necessarily protected from a poor reporting environment and an entrenched fear of reprisal.[31] According to the Brady Review, the evolution to HRO status is not in itself a simple task, as the industry will have to strive to understand the causes of incidents and fatalities. Dr Brady concluded:

> *The majority of fatalities are due to the slow unbolting of the organisation as it drifts towards failure.*[32]

Committee comment

The committee notes the findings of the Brady Review,[33] and that the legislative framework is just one component of the many factors that can influence and improve safety and health in the Queensland mining industry.

The committee also notes the specific recommendations to the regulator (DNRME) and supports their consideration by the department.

1.4 Policy objectives of the Bill

According to the explanatory notes, the principal policy objectives of the Bill relate to three state government priorities:

1. *Safety and health – to strengthen the safety culture in the resources sector through the introduction of industrial manslaughter offence provisions and requiring that persons appointed to critical safety statutory roles for coal mining operations must be an employee of the coal mine operator;*

29 Public briefing transcript, Brisbane, 17 February 2020, p 3.

30 Public hearing transcript, Brisbane, 3 March 2020, p 33.

31 Brady Review, p 69.

32 Brady Review, p 70.

33 Commissioner for Mine Safety and Health, correspondence to Hon Dr Anthony Lynham Minister for Natural Resources, Mines and Energy, dated 3 February 2020, tabled 6 February 2020, https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2020/5620T200.pdf

2. *Financial assurance – to implement legislative changes that support mine rehabilitation and financial assurance reforms that mitigate the financial risk to the State and improve rehabilitation outcomes for Queensland; and*
3. *Regulatory efficiency – to improve the administration and effectiveness of the regulatory framework applying to resource projects.*[34]

Additional amendments to legislation relating to Queensland's natural resources, mines and energy sectors are also included in the Bill. The purpose of these amendments is to improve the operation of the relevant Acts and Regulations.[35]

1.4.1 Safety and health reforms

One key policy objective is to introduce industrial manslaughter offences in the CMSHA, the MQSHA, the Explosives Act and the P&G Act to ensure that there are sufficient penalties where there is criminal negligence by an employer or senior officer and it has caused a workplace fatality.

A second key policy objective is to ensure that statutory office holders under the CMSHA can make safety complaints, raise safety issues, or assist an official in relation to a safety issue without fear of reprisal or impact on their employment. The CMSHA provides for the appointment of statutory office holders for coal mining operations. The Bill would amend the CMSHA to clarify that only persons who are employees of a coal mine operator may be appointed as certain statutory office holders.

The Bill proposes to amend the Explosives Act so as to broaden security clearance holder notification requirements in the Explosives Regulation 2017 and to enable the disclosure and publication of limited security clearance and authority holder information, including in an online register.

1.4.2 Financial assurance

The Bill proposes to give effect to the results of consultation outlined in the *Queensland Government Consultation Report: Abandoned Mines and Associated Risks* released in September 2019. The amendments address:

- increasing the scrutiny around the financial capability of a resource authority holder when there is a change in ownership ('change of control')
- increasing oversite of resource sites that enter care and maintenance by requiring significant mineral mining lease holders to submit plans on their proposed activities ('care and maintenance')
- broadening the state's authorised person powers for remediating an abandoned mine and abandoned operating plant sites to make them safe, durable, secure and enable productive land uses ('abandoned mines and abandoned operating plants').[36]

The Bill also proposes to allow the state to tender areas of land for a mining lease application. This reform will work in conjunction with the state's abandoned mines reforms to allow the targeted release of sites that have been abandoned, and where an opportunity to commercialise a potentially viable residual mineral resource exists.[37]

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34 Explanatory notes, p 1.

35 Explanatory notes, p 1.

36 Explanatory notes, p 4.

37 Explanatory notes, p 4.

1.4.3 Regulatory efficiency

The Bill proposes to amend regulation-making powers in the energy and water sectors to 'improve the efficiency and timeliness' of the resource authority approval process and the resource assessment process.[38]

1.5 Government consultation on the Bill

DNRME undertook consultation for each of the three principle policy objectives. The explanatory notes describe the consultation for the proposed reforms in relation to safety and health as follows:

> *External stakeholders were consulted through a discussion paper on industrial manslaughter offences in late November 2018. Further consultation was undertaken in November 2019 through an information paper and a draft Bill for the industrial manslaughter provisions. Consultation occurred with external stakeholders including: the Construction, Forestry, Maritime, Mining and Energy Union; the Australian Workers' Union; the Australian Manufacturing Workers' Union; the Queensland Resources Council; Cement and Concrete Aggregates Australia; the Mine Managers' Association of Australia; the Australasian Explosives Industry Safety Group; and the Australian Petroleum Production and Exploration Association; industry organisations; and the Queensland Law Society. Stakeholders had polarised views with unequivocal support being given by the unions, and industry stakeholders either not supporting or raising concerns with some of the details of the proposal.*[39]

Additional consultation was undertaken on the proposed amendments to clarify costs orders, and with regard to explosives regulation-making powers:

> *The Queensland Resources Council, Cement and Concrete Aggregates Australia, and the Australian Petroleum Production and Exploration Association were also consulted on costs orders amendments; and the Australasian Explosives Industry Safety Group was consulted on explosives amendments. No concerns were raised by stakeholders.*[40]

To commence the consultation process on the proposed provisions in the Bill relating to financial assurance the Queensland Government released two discussion papers for public consultation on 31 May 2018, in response to the matters identified for reform by the *Review of Queensland's Financial Assurance Framework*, released by the Queensland Treasury Corporation in April 2017:

- *Achieving improved rehabilitation for Queensland: other associated risks and proposed solutions*, which proposed reform ideas relating to care and maintenance, changes in the control of resource authorities, and disclaimed mines
- *Achieving improved rehabilitation for Queensland: addressing the state's abandoned mine legacy* which proposed reform ideas relating to abandoned mines.[41]

A consultation report was developed in response to submissions on the two discussion papers: *Queensland Government Consultation Report: Abandoned Mines Legacy and Other Associated Risks* and was released in September 2019. According to the explanatory notes:

> *Targeted consultation was undertaken during the development of the Bill in November – December 2019. Stakeholders included representatives from the Queensland Resources Council, the Australian Petroleum Production & Exploration Association, the Association of Mining and Exploration Companies, the Environmental Defenders Office, the Queensland Farmers'*

38 Explanatory notes, p 4.

39 Explanatory notes, p 17.

40 Explanatory notes, p 18.

41 Explanatory notes, p 3.

Federation, AgForce, the Lock the Gate Alliance, the Queensland Law Society, and WWF-Australia.

DNRME undertook community consultation in relation to the Bill's provisions addressing regulatory efficiency, as stated in the explanatory notes:

Community consultation occurred on the regulatory efficiency investigation via the request for submissions during the investigation between 4 September 2018 and 4 October 2018. Forty-four written submissions were received.

DNRME also met with the Queensland Resources Council, the Association of Mining and Exploration Companies, AgForce, the Queensland Farmers' Federation, WWFAustralia and the Environmental Defenders Office to discuss the scope of the election commitment and investigation. These organisations also provided a written submission.

Targeted consultation was undertaken during the development of the Bill in November – December 2019. Stakeholders included representatives from the Queensland Resources Council, the Australian Petroleum Production & Exploration Association, the Association of Mining and Exploration Companies, the Environmental Defenders Office, the Queensland Farmers' Federation, AgForce, the Lock the Gate Alliance, the Queensland Law Society, and WWF-Australia.[42]

The Bill includes a proposed amendment to Queensland's Energy and Water Ombudsman regulation-making power. According to the explanatory notes, no 'specific consultation' was undertaken on the proposed amendment, however at a regular stakeholder consultation forum, energy retailers and consumer groups 'made it very clear' that they supported a 'more adaptive, responsive framework for the operation of the Queensland Energy and Water Ombudsman'.[43] In relation to the Bill's provisions concerning fees and charges for customers under the National Energy Retail Law (Queensland), DNRME advised that public consultation occurred as part of a statutory review of the operation of the National Energy Retail Law in Queensland.[44]

For the Bill's provisions in relation to the administration of water supply and retailing, DNRME consulted with a number of impacted entities, including Seqwater and Sunwater, Urban Utilities and Unitywater, as well as the Border Rivers Commission.[45]

1.5.1 Stakeholder comment

A number of submitters commented on the consultation process for the Bill in relation to the proposed amendments in cls 6 to 10, requiring statutory office holders to be employees of the Coal Mine Operator.[46] Representatives from a number of mining companies submitted that the proposed provision was not part of DNRME's consultation process.[47] For example, a representative from Peabody Mines stated:

The industry has been surprised by the addition of Division 2 amendments which were not previously included in the consultation draft released in 2019.[48]

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42 Explanatory notes, pp 18-19.

43 Explanatory notes, p 18.

44 Explanatory notes, p 19.

45 Explanatory notes, pp 19-20.

46 Bill, cls 6-10; see for example submission 22.

47 See for example submissions 30, 45, 54, 62 and 67.

48 Submission 15, p 3; similar comments made by other Peabody Energy Australia representatives in submissions 18, 19, 26, 45 and 59.

Other stakeholders within the mining industry also expressed concern over the consultation process for that provision, for example, coal mine worker Mr Karl Barnsdale stated:

> *I am disappointed in the consultation process, it appears to be non-existent. The first I heard about the proposed amendments were through social media.*[49]

The QRC also expressed concern that the provision was not included in the consultation documentation and submitted, 'it is also apparent that no consideration has been given to the enormity of the impact that it will have on coal mine operators, for no demonstrated safety benefit'.[50]

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.

After examination of the Bill and its policy objectives and consideration of the information provided by DNRME, submitters, and witnesses, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 be passed.

[49] Submission 2, p 1; similar comments made by Mr Scott Cooper, submission 10, p 1.

[50] Submission 54, p 4; public hearing transcript, Brisbane, 3 March 2020, p 14.

2 Examination of the Bill

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

2.1 Safety and health

The explanatory notes state that the Bill proposes to 'strengthen the safety culture in the resources sector through the introduction of industrial manslaughter offence provisions and requiring that persons appointed to critical safety statutory roles for coal mining operations must be an employee of the coal mine operator'.[51]

The AWU supported this approach:

> *While acknowledging that these laws are just one step in what should be a significant cultural and structural change to improve safety in mines and quarries, they represent significant action to ensure that employers in the mining industry are held to the highest possible level of accountability when it comes to worker safety.*[52]

The CFMMEU submitted:

> *The introduction of this legislation will we believe act as a deterrent to the bad behaviours and poor culture of some employers and others within these organisations who continue to not comply with the law.*[53]

Ms Liz Watts from the Queensland Coal Site Senior Executives Forum outlined that site senior executives (SSEs) are driven to provide safe outcomes for all those employed at a mining operation:

> *From a safety perspective, as SSEs we go into the role knowing and understanding our legislative obligations to provide safe outcomes. However, the legislation is second to our deep and fundamental desire to look after our people, to demonstrate care for our people and to put as many barriers between our people and the inherent hazards that they are faced with in the work that they do every single day. This type of responsibility demands a 24-hour-per-day seven-day-a-week commitment. This is not prescribed in the SSE position description. It comes from a fundamental desire to do the right thing, which is what we strive to do.*[54]

The committee received a large number of submissions from individuals with significant and extensive mining industry experience and who sought to contribute to the discussion on the proposed legislation:

> *There will be many submissions that will hold far more eloquent and cogent legal arguments regarding the introduction of the Industrial Manslaughter than I could possibly raise. The value of my submission will be from the perspective of one who has accepted the responsibilities of SSE and works currently in the role.*[55]

2.2 Industrial manslaughter

In October 2017, the Queensland Parliament introduced industrial manslaughter provisions into the WHSA, *Electrical Safety Act 2002*, and *Safety in Recreational Water Activities Act 2011* (collectively, the WHS legislation).

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51 Explanatory notes, p 1.

52 Submission 60, p 2.

53 Submission 77, p 3.

54 Public hearing transcript, Moranbah, 3 March 2020, p 3.

55 Mr Brendan Lynn, submission 40, p 1.

This Bill amends the CMSHA, the MQSHA, the Explosives Act and the P&G Act to introduce industrial manslaughter offences into these Acts. The explanatory notes state:

> *The new offences will ensure there is consistency in how deaths of workers on Queensland worksites are treated and aligns with the Queensland Government's commitment to ensuring the safety and health of all workers across all industries.*[56]

The AWU submitted:

> *Given the high-risk nature of the mine and quarrying industry and the almost unparalleled importance of risk management to keep workers safe from harm or incident, there is no valid basis on which mine and resource workers should be excluded from such protections.*[57]

The Bill significantly increases penalties for the most serious examples of negligent conduct by an employer or senior officer which causes the death of a worker. DNRME submitted:

> *The Queensland government considers that the additional sanctions for the proposed industrial manslaughter provisions are necessary to ensure appropriate deterrence for non-compliance with safety and health requirements.*[58]

Mr Stephen Smyth from the CFMMEU stated that the CSMHA:

> *… already contains a number of penalties and prosecutions; unfortunately, death is the bar. There are defences, and one of the defences is actually doing your job. There are defences in the act now and there will be defences moving forward, and that is about complying with your obligations, following the relevant safety management system and doing what is right. We welcome the proposed industrial manslaughter provision. We believe it will act as a deterrent.*[59]

The Bill inserts definitions for an employer, a senior officer of an employer and an executive officer if the employer is a corporation.[60]

The maximum penalty for an individual is 20 years imprisonment and for a body corporate is 100,000 penalty units.[61] The offence is a crime.[62]

The explanatory notes state:

> *Industrial manslaughter will be an indictable offence and the usual criminal procedural requirements will apply to such offences. The onus of proof in criminal proceedings will apply and the guideline for industrial manslaughter prosecutions will be the same as those for manslaughter under the Criminal Code. The decision to prosecute will be made by the independent Work Health and Safety (WHS) prosecutor. These factors will provide safeguards around decisions to prosecute.*[63]

Similar to other manslaughter offences, industrial manslaughter offences under the CMSHA, the MQSHA, the Explosives Act and the P&G Act will have no time limitation period for prosecution.[64]

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56 Explanatory notes, p 1.

57 Submission 60, p 3.

58 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 3.

59 Public hearing transcript, Moranbah, 3 March 2020, p 12.

60 Explanatory notes, pp 23, 26, 81, 101.

61 100,000 penalty units at March 2020 is $13,345,000; from 1 July 2019, the value of a penalty unit is $133.45 (see Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2019).

62 Explanatory notes, pp 23, 26, 81, 101.

63 Explanatory notes, p 10.

64 Explanatory notes, p 10.

Key issues raised in relation to industrial manslaughter offences were:

- the need for a new offence
- the clarification of the standard of conduct required to constitute industrial manslaughter
- s 23 of the Criminal Code
- the time limits on the period for prosecution
- the capture of operational officers
- reluctance to take on statutory roles and make decisions on site
- reluctance to share information.

2.2.1 Need for a new offence

The CFMMEU supported the industrial manslaughter provisions in the Bill and argued the need for the proposed legislation to bring the resource sector in line with all other industries in Queensland:

> *The CFMMEU have been campaigning and fighting for the introduction of Industrial Manslaughter offences into the Coal Mining Safety and Health Act 1999. The union believes the introduction of this legislation is well overdue and is also required to bring us into line with all other industries in the state of Queensland. We believe that the introduction of industrial manslaughter offences into the CMSHA 1999 will provide and enhance the protections all coal mine workers need. The level of scaremongering and fear that suddenly this legislation will result people going to jail and being fined, is well over the top and wrong.*[65]

Similarly, the AWU stated:

> *It is the strong belief of the AWU that the inclusion of the proposed industrial manslaughter provisions consistent with those contained within the Work Health and Safety Act 2011 (OLD) will drive organisational change with in the mine and quarrying industry at the executive and senior management level to guarantee that worker safety is not sacrificed at the expense of operational capacity and efficiency.*[66]

Mr Jason Meikle stated:

> *I wanted to make it known that these amendments were put forward to the Government by coal mine workers at the coal face and not from mining corporations.*[67]

BHP did not consider that industrial manslaughter offences were necessary but noted that the Queensland Government had made a decision to proceed with introducing these offences into the CMSHA.[68]

Submitters highlighted the lack of information demonstrating the need for industrial manslaughter laws.[69] The QLS opposed the introduction of new criminal offences without persuasive evidence to demonstrate their need and evidence that existing laws are not capable of capturing the conduct which is the target of the offence:[70]

> *The Queensland Law Society does not support the introduction of the industrial manslaughter offences into the resources safety acts. There are existing criminal offences in these acts which*

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65 Submission 77, p 2.

66 Submission 60, p 3.

67 Submission 70, p 2.

68 Submission 56, p 2.

69 See submissions 13, 24, 27, 28, 32, also see public hearing transcript, Brisbane, 3 March 2020, p 25.

70 Submission 32, p 2.

capture conduct, both acts and omissions that causes a fatality, as well as offences in the Criminal Code which do the same.[71]

Idemitsu Australia submitted that introduction of a separate industrial manslaughter offence was not justified as significant offences addressing fatalities occurring at coal mines already exist in the CMSHA.[72] Similarly, the QLS noted that offences addressing fatalities in the resources sector already exist in the Resources Safety Acts and within the Criminal Code.[73] Glencore submitted:

The Queensland Government has not provided any analysis of prosecutions that were not pursued under existing laws due to an identified gap, nor has it provided empirical data to demonstrate that the existing law of Queensland is inadequate or ineffective in securing safety outcomes at Queensland mines.[74]

Submissions also noted that there was no evidence to suggest that there have been incidents where deaths have occurred that have been unable to be successfully prosecuted under the existing provisions.[75] The Australian Institute of Health and Safety (AIHS) submitted:

The Bill Explanatory Notes state that 'the current offences…are insufficient where actions or omissions involving criminal negligence…result in worker fatalities'. However, the absence of prosecutions in Queensland under the existing legislation (WHS Act), prior to the introduction of Industrial Manslaughter, do not suggest that the penalties were too low – they just were not being applied.[76]

Submitters also suggested that regulatory bodies need to be sufficiently resourced to engage with and, when necessary, investigate and prosecute operators.[77] Mr Luke Murphy from the QLS argued:

We think that what is in the first place required is proper resourcing and funding of investigations and prosecutions and it is only in circumstances where there has been that proper resourcing and funding and where there is, once that has occurred, a failure to achieve the successful prosecutions under the existing offences that further offences should be looked at.[78]

In response to these concerns, DNRME advise:

The Queensland government considers that the additional sanctions for the proposed industrial manslaughter provisions are necessary to ensure appropriate deterrence for non-compliance with safety and health requirements.[79]

2.2.2 Misalignment of risk

A range of submitters argued that industrial manslaughter offences proposed under the Bill 'looks to be a bolt on from Workplace and Health Safety legislation and does not take into consideration the statutory roles and clear obligation that currently exist in the Queensland Coal Mining Safety and Health Act'.[80] Mrs Judy Bertram from the QRC noted:

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71 Ms Pezzutti, Queensland Law Society, public hearing transcript, Brisbane, 3 March 2020, p 28.

72 Submission 33, pp 3-4.

73 See submissions 32, 33.

74 Submission 30, p 16.

75 See submissions 27, 30, 32.

76 Submission 27, p 2.

77 Ms Pezzutti, Queensland Law Society, public hearing transcript, Brisbane, 3 March 2020, p 28; Dr Anne Smith, submission 42.

78 Public hearing transcript, Brisbane, 3 March 2020, p 28.

79 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 9.

80 Mr Graham Gardener, submission 35, p 1.

> *From a personal perspective, I was the general manager of Workplace Health and Safety Queensland for five years. When I came into the resources sector I was quite staggered at the difference in the legislation and the extent to which these positions have such onerous responsibilities. There is no mirroring in other general workplace health and safety legislation, and the consequence is you just cannot bolt on industrial manslaughter provisions into resource acts without addressing the differences.*[81]

Site Senior Executives for BMC and BMA argued that in trying to merge the industrial manslaughter provisions of the WHSA into the CMSHA fails to take into consideration the purpose, history and current obligations within the CMSHA.[82]

Similarly, Mr Murphy from QLS noted:

> *I think, that the resource sector has been subject to its own specific legislation which is a result of the historical development of that industry and any further legislation that adds on to that needs to be considered in the context of the existing legislation which differs somewhat from the initial workplace health and safety situation.*[83]

Submitters argued the 'bolt-on' nature of the industrial manslaughter provisions to the Resources Safety Acts will result in a range of unintended consequences in its application and prosecution across industries. Mr Paul Goldsbrough stated:

> *While the Bill mirrors the provisions in the WHS Act, the Resource Safety Acts and the WHS Act are very different in their operation. The Resource Safety Acts require the level of risk to be "as low as reasonably achievable" while the WHS Act requires risk to be "as low as reasonably practicable". The WHS Act states that reasonably practicable means "that which is ... reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters ... ". Reasonably achievable is not defined in the Resource Safety Acts. This difference in definitions creates the potential for different interpretations and weightings by the Courts in the prosecution of the offence of industrial manslaughter.*[84]

Similarly, Cement, Concrete and Aggregates Australia (CCAA) highlighted the misalignment of the 'level of risk' between WHSA and the MQSHA. CCAA noted that different definitions of the level of risk under the MQSHA refers to the level of risk as 'as low as reasonably achievable' while the WHSA defines the level of risk 'as low as reasonably practicable' and that 'reasonably achievable' is not defined under the MQSHA, while 'reasonably practicable' is defined under the WHSA. CCAA stated that 'it would appear that those in the extractive industry are much more at risk of being found criminally negligent under the Bill, than equivalent roles in the WHSQ legislation'.[85]

To these concerns DNRME stated:

> *It is not intended to change how risk is managed in the Resource Safety Acts. The higher standard is warranted, where it is applied. This is outside the scope of this Bill.*[86]

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81 Public hearing transcript, Brisbane, 3 March 2020, p 20.

82 Submission 37, p 1.

83 Public hearing transcript, Brisbane, 3 March 2020, p 29.

84 Submission 78, p 1.

85 Submission 51, p 3.

86 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 17.

2.2.3 Standard of conduct required to constitute industrial manslaughter

The Bill currently proposes that industrial manslaughter offences apply in respect of negligent conduct. A number of submitters argued that there is ambiguity between the Bill and the explanatory notes on the standard of negligence in relation to the offence of industrial manslaughter:[87]

> *The Bill uses the term "negligence" yet the Explanatory Notes refer to "recklessness or gross negligence". This is ambiguous. If the punishment could include jail time then the degree of negligence should be the same as for crimes generally, that being criminal negligence.*[88]

In addition submitters argue that no definition is provided in the Bill as to what constitutes negligence with respect to the industrial manslaughter offence. Glencore outlined that:

> *There is a critical distinction in the criminal law between the tests of recklessness and negligence. Generally stated, recklessness involves a higher degree of culpability than criminal negligence. For offences involving reckless conduct, the Prosecutor generally must prove beyond reasonable doubt that the defendant was aware of, and took, an unjustifiable risk. In order for the offence to be proven, the Defendant must have had actual foresight of the likelihood of the consequences of their conduct, and willingly or deliberately proceeded with that conduct anyway.*[89]

Similarly, the QLS argued:

> *…we note the proposed offence provisions only apply if the employer or senior officer is negligent in causing the death. To avoid any doubt, we submit that the term "criminal negligence" should be used instead to ensure the affected parties are aware of the standard of care required by the employer or senior officer. If an industrial manslaughter provision is to be introduced into the Resources Acts, then such an offence must have its basis in criminal negligence. To weaken that level of criminal culpability has the potential to unfairly and unreasonably expose persons to conviction and punishment for an unintentional omission or momentary inadvertence relating to the management of a safety and health management system. This would also occur in circumstances where more appropriate and proportionate offences and penalties could apply.*[90]

Idemitsu Australia submitted:

> *… the drafting of the proposed offence does not make it clear that a necessary element of the offence is "criminal negligence" as opposed to "negligence". Addressing this concern only requires the insertion of a single word and will otherwise remove the present uncertainty about how the proposed amending section is to be interpreted by the courts.*[91]

Mr Stone from DNRME clarified:

> *Industrial manslaughter is a criminal offence, and the standard of proof is the criminal standard required for all criminal offences whether under the Criminal Code or other legislation. Each element of the offence must be proven beyond reasonable doubt in order to convict an individual. The government's policy intent is that criminal negligence is addressed through the provision. This may include recklessness or gross negligence but requires a much higher standard than civil negligence. In this regard, the courts have said there must be a breach of duty that is so gross as to warrant the intervention of the criminal law and criminal punishment.*[92]

Additionally, DNRME stated:

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87 See submissions 15, 18, 19, 25, 26, 27, 30, 32, 33, 45, 51, 56, 59.

88 Mr John Anger, submission 18, p 3.

89 Submission 30, p 3.

90 Submission 32, p 3.

91 Submission 33, p 3.

92 Public hearing transcript, Brisbane, 3 March 2020, p 33.

> *The proposal is for a criminal offence of industrial manslaughter. This requires proof of negligence to the criminal standard and is "recklessness" or "gross negligence". This will ensure consistency with the approach in the Work Health and Safety Act 2011.*[93]

Given the level of uncertainty expressed in submissions, the committee recommends that the Minister clarify the standard of negligence in relation to the offence of industrial manslaughter.

Recommendation 2

The committee recommends that in his second reading speech the Minister for Natural Resources, Mines and Energy clarify the standard of negligence that will apply in relation to the offence of industrial manslaughter in the Mineral and Energy Resources and Other Legislation Amendment Bill 2020.

2.2.4 Section 23 of the Criminal Code

A significant number of submitters[94] raised concerns in relation to the amendments[95] so that s 23 of the Criminal Code[96] does not apply in relation to an offence of industrial manslaughter. QLS submitted:

> *QLS is particularly concerned that an accused will therefore not be able to plead circumstances of accident, involuntariness or acts independent of their will. In the absence of appropriate defence or excuse provisions, these provisions essentially become strict liability offences, which infringe and deny fundamental rights given to those accused of homicide offences which carry an extremely high maximum penalty. It is the Society's view that this infringement of a cornerstone principle of our justice system is not justified by the objects and purposes of the legislation.*[97]

Several submitters revealed that it was unclear to them how defences which are available for manslaughter under the Criminal Code could be removed in respect of industrial manslaughter under the CMSHA.[98] Mr David Brosnan felt that:

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93 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 4.

94 See for example submissions 15, 18, 19, 26, 27, 28, 30, 32, 33, 35, 37, 45, 47, 54, 56, 58, 59, 74.

95 Bill, cl 11 (*Coal Mining Safety and Health Act 1999*, s 48B), cl 157 (*Mining and Quarrying Safety and Health Act 1999*, s 45B), cl 30 (*Explosives Act 1999*, s 54B), cl 203 (*Petroleum and Gas (Production and Safety) Act 2004*, s 799J).

96 Section 23 Intention—motive

(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for—
(a) an act or omission that occurs independently of the exercise of the person's will; or
(b) an event that—
(i) the person does not intend or foresee as a possible consequence; and
(ii) an ordinary person would not reasonably foresee as a possible consequence.

Note — Parliament, in amending subsection (1)(b) by the *Criminal Code and Other Legislation Amendment Act 2011*, did not intend to change the circumstances in which a person is criminally responsible.

(1A) However, under subsection (1)(b), the person is not excused from criminal responsibility for death or grievous bodily harm that results to a victim because of a defect, weakness, or abnormality.

(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

97 Submission 32, p 2.

98 Idemitsu Australia, submission 33, p 3.

Coal mine workers are treated worse than a person that has committed murder as a person that has committed murder can reduce his sentence by claiming he did not mean to do it.[99]

Mr John Anger submitted:

The defences that apply to the offence of manslaughter under the Queensland Criminal Code Act 1889 should also apply to an offence of industrial manslaughter under resources safety and health legislation. It is unacceptable to exclude such defences when the punishment might include jail time.[100]

Arrow Energy argued that:

Despite the best efforts of employers and their safety management systems, personnel may unintentionally expose themselves or others to harm… The rationale for removing this defence is not clear, recognising that it is based on a common law view of reasonably foreseeable consequences from acts or omissions.[101]

In response to these concerns DNRME advised:

Consistent with the approach for industrial manslaughter offences in the Work Health and Safety Act 2011, the section 23 of the Criminal Code defence for accident, does not apply, to industrial manslaughter offences for the Resource Safety Acts. The industrial manslaughter offence requires proof beyond reasonable doubt that the employer or senior officer is negligent about causing the death of the worker by the conduct. Therefore, there is no need to include a defence of reasonable precautions and proper diligence.[102]

Some submitters were concerned that only custodial penalties were contemplated for individuals, removing judicial discretion to apply financial penalties where that may be a more appropriate alternative.[103] BHP submitted:

The Bill only provides one penalty option for individuals found guilty of an industrial manslaughter offence, which is imprisonment (for a maximum of 20 years). We recommend that the Bill be amended to provide courts with the ability to impose either financial penalties or imprisonment, depending on the nature, circumstances and seriousness of the offence.[104]

DNRME noted that the penalties proposed are consistent with those in the WHSA.[105]

The QLS also raised concerns that the current framing of the management of 'acceptable level of risk' imposed on SSEs under the CMSHA and MQSHA, places onerous duties of care on SSEs which implies that, where a fatal incident occurs, there is an implied assumption that an acceptable level of risk was not achieved. This places a reverse onus of proof on the SSE.[106] Mr Murphy from QLS outlined:

In its simplest, everyone is entitled to the presumption of innocence until otherwise proven. The onus is not specifically reversed in the draft bill—it is by implication—and that arises as a result of the duty being to be able to show that the risk has been at an acceptable level. If in fact the event that is giving rise to the prosecution is a fatality, the inherent outcome of that has to be that it was not an acceptable level, I would think, and that then implies that it is on the

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99 Submission 24, p 3.

100 Submission 18, p 3. Also see submissions 15, 19, 26, 27, 28, 30, 32, 33, 35, 37, 45, 47, 54, 56, 58, 59, 74, 79, 80.

101 Submission 28, p 3.

102 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 4.

103 Queensland Law Society, submission 32, p 2.

104 Submission 56, p 4.

105 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 20.

106 Submission 32, p 4.

respondent or the defendant to the charge to prove that it was at an acceptable level rather than the prosecution proving it was not...[107]

DNRME did not respond to this concern. Given that the QLS has raised uncertainty in relation to this aspect of the Bill the committee recommends that the Minister clarify this matter in his second reading speech.

Recommendation 3

The committee recommends that in his second reading speech the Minister for Natural Resources, Mines and Energy clarify that the Bill, read in relation to the current safety and health obligations under the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*, does not place a reverse onus of proof on a site senior executive in relation to the offence of industrial manslaughter.

2.2.5 Time limits on period for prosecution

Similar to other indictable offences, the proposed industrial manslaughter offences under the CMSHA, the MQSHA, the Explosives Act and the P&G Act, will have no time limitation period for prosecution.

Submitters were concerned that this would cause an unreasonable burden on those who are involved with an industrial fatality, including the family and witnesses.[108] Arrow Energy argued that:

The original limitation on time of 2 years to bring a prosecution under the P&G Act Section 837 (4) (C) was fairer in our view.[109]

BHP argued that existing timelines in the CMSHA should be retained for consistency:

To ensure consistency and maintain the integrity of any proceedings, we recommend that the same limitation periods which apply to existing offences in the CMSH Act should apply to the industrial manslaughter offence. That is, effectively a maximum of three years or two years after a coronial inquest (whichever is longer).[110]

Peabody Australia argued that there should be a twelve month statute of limitations on industrial manslaughter charges from the date of the death.[111]

DNRME noted:

Industrial manslaughter is an indictable offence. As a matter of law there are no time limitations for bringing indictable offence proceedings.[112]

The committee was concerned that timely prosecutions should occur in the event of any industrial manslaughter charges. Mr Djukic from DNRME noted the department's objective is always to complete investigations and bring them to a point of making a decision about enforcement as quickly as possible. However, given the complexity of mining accidents, investigations can be lengthy, also making it harder to sustain a charge.[113] Mr Djukic noted:

There was a desire from a number of stakeholders to see a statute of limitations placed on industrial manslaughter. [However] with industrial manslaughter being an indictable offence,

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107 Public hearing transcript, Brisbane, 3 March 2020, p 29.

108 Arrow Energy, submission 28.

109 Submission 28, p 4.

110 Submission 56, p 4.

111 Submission 56, p 3.

112 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 20.

113 Public briefing transcript, Brisbane, 3 March 2020, p 4.

the way the law operates there is no limitation. That is simply the law that applies to indictable offences. Stakeholders, of course, are interested to see that investigations and decision-making around these matters are completed as quickly as possible.[114]

2.2.6 Who will be captured by industrial manslaughter offences?

Industrial manslaughter will be an indictable offence available where criminal negligence by senior management leads to a worker's death on a resource site. The Bill inserts definitions for an employer, a senior officer of an employer, and an executive officer if the employer is a corporation:[115]

An executive officer, of a corporation, is defined as 'person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer'.[116]

A senior officer, of an employer is defined as:

(a) if the employer is a corporation—an executive officer of the corporation; or

(b) otherwise—the holder of an executive position (however described) in relation to the employer who makes, or takes part in making, decisions affecting all, or a substantial part, of the employer's functions.[117]

DNRME noted:

While individuals have always been able to be prosecuted for manslaughter under the Criminal Code, there are limitations with establishing corporate criminal responsibility for manslaughter under the Criminal Code. In particular, successful prosecutions of large corporations under the Criminal Code are unlikely, on account of the need to identify an individual director or employee as the directing mind and will of the corporation. Inserting an industrial manslaughter offence into the Resource Safety Acts enables the conduct of employees, agents and officers to be attributed to the company. An individual manslaughter prosecution of a corporation under the Resource Safety Acts is more likely to be successful.[118]

The Australian Petroleum Production and Exploration Association (APPEA) supported the intent to capture the most senior executives and officers of a corporation and submitted that under the WHSA:

The use of the term 'senior officer' for the industrial manslaughter offence is intended to capture individuals of the highest levels in an organisation (those who can create and influence safety management and culture at their workplace). The rationale for capturing these higher level officers is to ensure health and safety is managed as a cultural priority within organisations and to guarantee that safety standards are managed and supported from the top down.[119]

Mr Matthew Paull from APPEA highlighted:

I think the safety culture in an organisation can only really be driven by the top level. It is the upper management who makes it clear to employees that safety is the priority. ... you need an offence that applies at the top level, not one that cascades down to someone who might manage a person or two on that day … they are not someone who can change the safety culture of an organisation. They do not set the direction. They do not allocate more funding to some sort of

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114 Public briefing transcript, Brisbane, 3 March 2020, p 4.

115 See Bill, cls 11, 30, 157, 203.

116 See Bill, cls 11, 30, 157.

117 See Bill, cls 11, 30, 157, 203.

118 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 9.

119 Submission 69, p 1.

> *equipment that will increase safety. They do not change safety procedures; they implement them.*[120]

A number of submissions raised concerns that the definition of 'senior officer' in the Bill was very broad and goes beyond executive officers of the corporation.[121] Kestral Coal Resources Site Senior Executives and senior managers argued:

> *A fundamental legislative principle of Industrial manslaughter law is that it was intended to apply to a person who is the embodiment of a corporation and acting for the purposes of the corporation (the controlling minds of an organisation). Industrial manslaughter laws were intended to acknowledge that activities or omissions of ordinary people doing ordinary work by people at shop floor level are imputed to the corporation via its officers such as its directors that control the financial resources, therefore we do not believe [as SSEs] we are agents of the corporation of which we are employed or otherwise engaged at the coal mine.*[122]

Mr Ken Singer from the Queensland Coal Site Senior Executives Forum stated that industrial manslaughter laws targeted at the most senior levels of an organisations could support the allocation of additional resources to improve safety processes and measure:

> *In my view the introduction of IM laws that apply to individuals at the most senior levels of an organisation (consistent with the definition of officer in s47A of the CMSHA which excludes SSEs) potentially creates an opportunity to improve the efficacy of SHMS audits and follow up actions by a Coal Mine Operator. The introduction of the IM law at Senior Officer Level will also potentially assist coal mine workers in securing resources as a result of on-site risk assessment processes.*[123]

Given the unique nature of the Resources Safety Acts which create statutory roles such as SSEs, site safety managers (SSMs), underground mine managers, open cut examiners (OCEs), and ventilation officers, it was argued that the amendments will capture people in operational roles on sites beyond senior officers of the corporation.[124] Submitters argued that this was inconsistent with the application of industrial manslaughter laws in the WHSA, which does not aim to capture shop floor workers.[125] It was argued that the Bill establishes penalties for factors outside the control of resource sector statutory officers and is significantly disproportionate to that of other work places in Queensland.[126]

The QRC argued:

> *Resource workers like SSEs, SSMs, safety certificate holders and the people identified in the management structure of a mine are not executive officers of the corporation. They do not have the capacity to affect significantly the corporation's financial standing but are simply employed to work at the operation using the resources they are given.*[127]

Similarly, Arrow Energy argued that SSMs from the P&G industries would be captured by the proposed legislation and that these positions are not positions that have influence over the company as a whole.[128]

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120 Public hearing transcript, Brisbane 3 March 2020, p 10.

121 Mr Glen Alsemgeest, submission 15; Peabody Energy Australia, submission 59; Queensland Resources Council, submission 54; Australian Petroleum Production & Exploration Association, submission 69.

122 Submission 64, p 2.

123 Submission 43, p 2.

124 Idemitsu Australia, submission 33, p 4.

125 Mr Paul Goldsbrough, submission 78, p 1.

126 Mr Ken Singer, submission 43, p 2.

127 Submission 54, p 9.

128 Submission 28, p 3.

> *Arrow's understanding of the intent of the Bill is to establish an offence of Industrial Manslaughter to apply to persons with influence over the company as a whole. Arrow is concerned the current drafting will capture Site Safety Managers (SSMs) and other front line, field based personnel who engage workers as contractors or via labour hire arrangements. It is Arrow position that if Industrial Manslaughter is to be introduced, SSMs should be specifically excluded, and the definitions need to be very carefully considered to avoid inadvertent capture of lower level employees.*[129]

APPEA stated that it was gravely concerned that the drafting of the Bill does not exclude line managers, specifically the statutory position of SSM and people who report to SSMs, from industrial manslaughter offence.[130]

BHP submitted:

> *We have already seen this effect within our business, in that the proposed "senior officer" offence has already generated significant anxiety amongst our SSEs and those reporting to them. Our SSEs are concerned that they could be captured by the industrial manslaughter offence and become a target once the new laws commence, and be punished despite their best efforts and overwhelming commitment to mine site safety. Their concern is warranted when viewed in the context of the CMSH Act, which places onerous obligations on SSEs. Moreover, SSEs already carry liabilities under the CMSH Act in the event of a failure to meet these responsibilities, including maximum penalties of up to $400,350 or 3 years imprisonment.*[131]

Mr MacFarlane from QRC stated:

> *Rather than extending the prospect of a fine or jail time to those decision-makers beyond the mine site, the industry expects this bill will load a heavier burden onto site based SSEs and the positions reporting to them, making their fundamental role untenable.*[132]

A number of submitters argued the need to exclude statutory office holders under the Resources Safety Acts from the definition of 'senior officer' under the Bill.[133] Additionally, it was noted that the CMSHA has specific obligations for people on site including statutory position holders[134] and pre-existing processes in the CMSHA that deal with serious breaches including the type of incidents that would attract the response of the industrial manslaughter provisions in the Bill.[135]

The QRC claimed that the potential to confuse the SSE and other statutory and management structure roles with the role of Board level executives has already been recognised in the CMSHA and the MQSHA. To ensure that statutory roles in the resources sector not be included, the QRC argued that the definition of 'senior officer' be amended to not include a person appointed as, or whose position reports directly or indirectly to the SSE for a coal mine.[136] Similarly, Glencore submitted:

> *…the offence should only apply to those people who are genuinely the most senior people in the organisation and exclude SSEs and their direct and indirect reports.*[137]

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129 Submission 28, p 1.

130 Submission 69, p 1.

131 Submission 56, p 2.

132 Public hearing transcript, Brisbane, 3 March 2020, p 13.

133 See for example submissions 15, 18, 19, 31, 36, 37, 38, 43, 50, 52, 62.

134 Section 39(f) requires all persons on site 'not to do anything wilfully or recklessly that may adversely affect the safety and health of someone else at the mine'.

135 Mr Neville Stanton, submission 19, p 2.

136 Submission 54, p 10.

137 Submission 30, p 4.

APPEA suggested that to ensure alignment with the WHSA to explicitly exclude SSMs and those who report to them, the definition of 'executive officer' be amended so that it accurately describes the highest level of management.[138]

In response to submissions such as those from mining companies and peak resource bodies, Mr Djukic from DNRME advised:

> *…a statutory office holder can only be prosecuted if they are a senior officer within the corporation… And decision-making at that senior level that can really influence the way that resources are allocated, for example, or for addressing safety concerns.*[139]

In contrast the AWU argued:

> *It is the view of the AWU that senior site executives of mines and quarries remain the most appropriate people to be captured under proposed industrial manslaughter legislation. Given senior site executives are ultimately responsible for the day-to-day safety on site, and in particular are generally tasked with identifying safety risks and instruct employees on safety matters the AWU believes they are best placed to assume responsibility for onsite safety. The AWU would submit that the only way of ensuring that this legislation is appropriately enforced is to ensure those senior officers with direct responsibility for worker safety are held liable.*[140]

Similarly, the CFMMEU stated:

> *Senior officer has a definition which needs to be considered further. The definition of who it applies to needs to be read in such a way it applies to all with obligations and also need to look at other off-site obligations. The CFMMEU also welcomes the introduction of the Senior Officers definition into the CMSHA 1999 and to sit alongside the current obligation's holders for which this new proposed legislation applies.*[141]

The CFMMEU argued the need to expand the range of statutory officers who have obligations and responsibility for the health and safety in coal mining operations to include open-cut examiners, deputies and supervisors.[142] Mr Smyth stated:

> *We even go a step further to say that the obligations should apply to people offsite who may be in a remote-controlled control room somewhere giving directions to a person onsite, because that person will not be picked up. We think there is some room around the definition and how it should apply.*[143]

Mr Djukic from DNRME informed the committee:

> *The industrial manslaughter provisions have been drafted to say that the employer is responsible. The employer in that context—and only in the context of industrial manslaughter—is defined as the company or the entity which employs the person or otherwise engages the person. For example, if a mining house were running a mine and contracted in certain roles and if liability were to attach to one of those contracted-in roles, that would that still flow back to the operator being the entity which has otherwise engaged the person... In that particular context, the operator would still be the employer… Of course, each individual case for industrial manslaughter would be treated on its own facts. It would be a matter for the prosecutor to prove beyond*

138 Submission 69, p 3.

139 Public briefing transcript, Brisbane, 3 March 2020, p 6.

140 Submission 60, p 4.

141 Submission 77, p 3.

142 Submission 77, pp 3-7.

143 Public hearing transcript, Moranbah, 3 March 2020, p 12.

reasonable doubt that the entity charged was the employer—that they had caused the fatality and so on beyond reasonable doubt.[144]

DNRME confirmed that SSEs are not by default a senior officer and therefore not ordinarily liable for industrial manslaughter:

Whether a site senior executive or statutory position holder is a senior officer and liable for an industrial manslaughter offence will depend on the individual circumstances of the matter, including their position and role in taking part in management decisions of the employing entity. Where the employer is a corporation, the prosecution must prove that the site senior executive is concerned with or takes part in the corporation's management – as opposed to the mine. A site senior executive is not by default a senior officer. The status of statutory role holders in a corporation's management is a matter for the corporation itself.[145]

2.2.7 Adverse consequences

A significant number of submitters argued that the Bill's industrial manslaughter provisions would have an adverse impact and provide a poor form of motivation to improve and develop a better safety culture.[146] In particular, the committee heard from a number of SSEs. Mr Glen Alsemgeest argued:

I am a mine site senior executive (SSE) with 15 years in the industry (with 3 years as an SSE). Under the existing legislation, the Coal Mining Safety and Health Act 1999 (CMSHA), I have over [200] obligations which are designed to protect the safety of our workforce. I take these obligations very seriously in discharging my duties. I am supportive of all initiatives that will result in improved safety outcomes and an improved safety culture for our industry. I have concerns though that there are elements in the Bill that will actually be counterproductive and drive the opposite result.[147]

Many SSEs felt unfairly targeted given that their professional motivation for holding a SSE position was to improve the health and safety at their workplace:

Those people that then want to advance their careers into statutory positions do so because they want to have a positive impact on safety and make the industry a safer place. To only target those people in statutory positions is insulting because these people are already trying to make the mining sector a safer place.[148]

BMC and BMA Site Senior Executives submitted:

SSEs who have been around fatalities carry that weight with them every day for the rest of their lives. There is a knowledge of this responsibility when we take the role. We consider the risk and we do everything that we can - physically and mentally - to ensure our people go home safely every day. It is a 24 hour a day, 7 day per week job. Fundamentally, the role of the SSE is for people who care about people, often at the sake of significant personal sacrifice.[149]

144 Public briefing transcript, Brisbane, 3 March 2020, p 4.

145 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 19.

146 Mr Aaron Curtis, submission 5, p 3; Mr Glen Alsemgeest, submission 15, p 1.

147 Submission 15, p 1.

148 Mr Karl Barnsdale, submission 2, p 2.

149 Submission 37, p 3.

2.2.8 Reluctance to take on statutory roles and make decisions on site

A large number of submitters argued that industrial manslaughter provisions may result in a reluctance for people to take on statutory roles and make decisions on site.[150] It was argued that this would drive a poorer safety culture through the loss of experienced professionals from the industry.[151]

> *There would be a disincentive for operational employees to become statutory officials – undermining a decades-old system of promotion, which is a source of pride for our workforce and ensures experienced and respected people are in statutory positions. This could significantly reduce the pool of experienced people available for these roles… Persons willing to be nominated to be voted into the role of SSHR will now contemplate the fear of prosecution.*[152]

APPEA noted that the Bill as drafted will:

> *… have a material and negative impact on the industry's ability to attract high quality individuals to fill these operational roles. Oil and gas is a global industry and the best workers are free to work in jurisdictions where they are not inappropriately subjected to severe offences of this nature. By extension the Bill will degrade safety outcomes.*[153]

2.2.9 Reluctance to share information

Several submitters argued that the positive safety culture developed in Queensland mines as a result of shared industry learnings would discontinue as a result of fear of prosecution under the industrial manslaughter offence provisions.[154] Arrow Energy submitted that:

> *A foundation of the industry's current safety performance and safety culture is its' ability the openly share the findings from incidents so that others can learn and improve - with the goal of avoiding future incidents. The spectre of potential Industrial Manslaughter prosecutions, particularly where there is no limitation on time in relation to starting proceedings, will reduce the open sharing of information and potentially weaken a safety culture that has taken years to develop.*[155]

QLS submitted:

> *…the introduction of industrial manslaughter provisions may also have the unintended consequence of compromising individuals' willingness to participate in safety investigations following fatal accidents, including investigations which SSEs are obliged to undertake.*[156]

Mr Brendan Lynn, General Manager and Site Senior Executive at Peak Downs Coal Mine argued:

> *I fear also that it may impact on our efforts to create a safety culture founded on the reporting of hazards and near misses and the transparent sharing of lessons learned. Over the last three years we have increased by more than a 100% the reporting of hazards at our mine. This improved reporting has provided a significant opportunity to reduce the exposure of our people to risk. Anything that reduces the feeling of "safety" in the reporting of near misses and hazards will not be a positive for our operation or industry.*[157]

Ms Liz Watts from the SSE Forum informed the committee:

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150 See submissions 15, 18, 19, 26, 31, 36, 45.

151 See for example submissions 8, 12, 15, 18, 19, 26, 45, 47, 59.

152 Mr Damien Wynn, submission 31, p 2.

153 Submission 69, p 2.

154 See for example submissions 19, 25, 26, 30, 36, 42, 45, 48.

155 Submission 28, p 1.

156 Submission 32, p 4.

157 Submission 40, p 1.

> *We know safety outcomes are delivered when our coalmine workers are encouraged by their leaders to report hazards and near misses, when they contribute to the investigations without fear and when there is a safe-to-speak-up culture that was discussed widely following the safety resets. We fear that the introduction of an offence that could capture SSEs and those reporting to them will undermine our combined efforts to improve safety and drive a proactive safety culture.*[158]

Similarly, Glencore argued:

> *Implementing industrial manslaughter provisions would also inhibit open communication and consultation between duty holders and regulators due to fear of prosecution and that disclosure would be used against duty holders. The consequences may include reduced information sharing for education and guidance purposes and less incident reporting. The absence of this information sharing would result in a reduced understanding of what should be known risks and these risks would then continue to exist within much of the industry.*[159]

Submitters raised concerns that industrial manslaughter legislation is likely to result in companies and individuals being defensive and the overuse of legal professional privilege. [160] It was suggested that records or documents created during an investigation and preparation of a report should not be admissible against any individual in relation to a fatality, noting that s 201 of the CMSHA provides such immunities in relation to records or documents created during the course of the investigation.[161]

BMC and BMA Site Senior Executives submitted:

> *This will pose an ethical dilemma for SSEs across the industry – do we continue our proactive cultural pursuit of hazard reporting, knowing that we are eliminating fatalities in the industry, or do we adopt an approach of self-preservation in the face of the law, minimising documentation so that we may stand a better chance in court in the event of a fatality? Fear drives the wrong safety outcomes. It has to be safe to speak up and call out hazards.*[162]

Similarly, Mr John Anger argued:

> *Industrial manslaughter is likely to result in companies and individuals being more defensive and the over use of legal professional privilege. This will be a distinct disadvantage in driving an improved safety culture across the industry.*[163]

In response to these concerns DNRME noted:

> *The Coal Mining Safety and Health Act 1999 already contains section 201, which provides a report prepared by a site senior executive in relation to a serious accident or high potential incident is not admissible in evidence against the site senior executive or any other coal mine worker mentioned in the report, in any criminal proceedings other than proceedings about the falsity or misleading nature of the report. As a serious accident is an accident at a coal mine that causes the death of a person or if a person is admitted to a hospital as an in-patient; section 201 will apply to industrial manslaughter offences. It is not intended to broaden the scope of section 201 to also include records or documents created in the course of the investigation, nor to*

158 Public hearing transcript, Moranbah, 3 March 2020, p 3.

159 Submission 30, p 6.

160 Public hearing transcript, Brisbane, 3 March 2020, p 16.

161 BMC and BMA Site Senior Executives, submission 37, p 9.

162 Submission 37, p 2.

163 Submission 18, p 4.

broaden the category of persons it covers. This is outside the scope of the current Bill. Also refer to the similar provision in the Mining and Quarrying Safety and Health Act 1999, section 195.[164]

2.2.10 Committee comment

The committee notes that the intent of government is to ensure that there is consistency across all work sites and that industrial manslaughter offences are available under the Resources Safety Acts, consistent with the existing industrial manslaughter offences in the WSHA. Many submitters were of the view that the introduction of industrial manslaughter offences in the resource sector was not justified as significant offences addressing fatalities occurring at coal mines already exist. However, given the significant number of recent resource sector fatalities in Queensland, the committee considers that additional measures are necessary to ensure an appropriate deterrence for non-compliance with safety and health requirements. There was submitter support for this objective.

The committee notes the concerns expressed by submitters in relation to the definition of 'senior officer', and that some considered this definition too broad as it would capture those individuals employed in operational roles. The committee also notes that all those in the resources sector currently have safety and health legislative obligations which are not found in the WHSA, and that it was argued that the provisions would extend the safety and health burden on SSEs and SSMs beyond what was required in other industries. Submitters highlighted the potential misalignment of definitions of risk between the Resources Safety Acts and the WHSA. However, given the advice from DNRME that a SSE is not by default a senior officer[165] and that the proposed amendments will enable the conduct of employees, agents and officers to be attributed to the company, making a prosecution of a corporation under the Resources Safety Acts more likely to be successful, the committee supports this aspect of the Bill.

In Moranbah, the committee heard:

It is just another layer of risk to me. I have the risk of losing my job. I have the risk of losing my life. That is no more or less important than 20 years to me. Anyone with a statutory role should not be looking at that. If they go about their jobs correctly and they discharge their obligations, they have nothing to worry about. If you follow the road rules and you do not drink and drive, when the police pull you over and put you on the bag you have nothing to worry about. It is pretty simple.[166]

The committee is satisfied that the industrial manslaughter offence provisions in this Bill require proof beyond reasonable doubt and does not change existing provisions concerning a person's obligations to answer questions about incidents, and matters concerning privilege against self-incrimination. As such the committee does not consider that there will now be a reluctance to share information.

The committee supports the proposed industrial manslaughter provisions to bring the conduct of senior officers and corporations clearly into focus in relation to safety in resources sector workplaces and to ensure that appropriate deterrence for non-compliance with safety and health requirements exists.

2.3 Appointment requirements for statutory office holders

The Bill amends the CMSHA to specify that only persons who are employees of a coal mine operator may be appointed as certain statutory office holders.[167] The explanatory notes state that 'this will

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164 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 10.

165 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 19.

166 Mr Scott Leggett, public hearing transcript, Moranbah, 3 March 2020, p 20.

167 Bill, cls 4-10; *Coal Mining Safety and Health Act 1999*, s 25 Meaning of site senior executive

(1) The site senior executive for a coal mine is the most senior officer employed or otherwise engaged by the coal mine operator for the coal mine who—

ensure that statutory office holders can make safety complaints, raise safety issues or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment'.[168]

Part 2 Division 2 of the Bill imposes a requirement for statutory office holders under the CMSHA to be employees of the coal mine operator. This requirement applies to the appointment of:

(a) the site senior executive;

(b) persons appointed to be a site senior executive during the absence of a site senior executive;

(c) persons holding an open cut examiner's certificate of competency appointed to carry out the responsibilities and duties prescribed under a regulation in surface mine excavations;

(d) the underground mine manager;

(e) any alternate underground mine manager;

(f) persons holding a first or second class certificate of competency or a deputy's certificate of competency appointed to be responsible for the control and management of underground activities when the manager is not in attendance at the mine;

(g) persons holding a first or second class certificate of competency or a deputy's certificate of competency to have control of activities in one or more explosion risk zones;

(h) persons with appropriate competencies appointed to control and manage the mechanical and electrical engineering activities of the mine;

(i) the ventilation officer;

(j) persons appointed to be a ventilation officer during the absence of a ventilation officer.

A transitional period of twelve months for compliance has been proposed to ameliorate the impacts on any existing statutory office holders who currently have a different employment status such as those who are contractors. The Bill introduces maximum penalties of 500 penalty units for coal mine operators who fail to ensure compliance with the requirements.[169]

Mr Djukic from DNRME outlined the amendment:

> *The holder of the tenure must appoint an operator to operate the mine. These provisions require that these statutory positions are employees of the operator. In some circumstances the holder of the tenure may appoint a contracting company to be the operator. Those sorts of situations would not change under these amendments. Where, however, the operator was one of the big mining houses—for example, the statutory positions that are contemplated in these amendments—those persons would have to be employed directly by the operator, the mining house, whatever that may be.*[170]

Some submitters suggested that the Bill was a step in the right direction but that the amendment be strengthened further.[171] Dr Anne Smith argued that the amendment would have a positive impact on the industry and could ensure that statutory office holders feel confident to make safety complaints,

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(a) is located at or near the coal mine; and
(b) has responsibility for the coal mine.

(2) Subsection (1)(a) does not require an officer with responsibility for exploration activities under an exploration permit or mineral development licence to be located at or near the coal mine.

(3) If the officer only has responsibility for a separate part of a surface mine, the officer's responsibilities and safety and health obligations under this Act as a site senior executive for a coal mine are limited to the separate part of the surface mine for which the officer has responsibility.

168 Explanatory notes, p 6.

169 Explanatory notes, p 13.

170 Public briefing transcript, Brisbane, 3 March 2020, p 3.

171 Name withheld, submission 13.

and raise safety issues with a reduced fear of reprisal or impact on their employment. Dr Smith submitted that permanent and contract workforces are often not on the same playing field:

- *Unless the contractor is working under his/her own company the remuneration packages can be substantially less than the onsite permanent workforce.*
- *An "us and them" culture on the mine site (contractors are often not viewed as the same/equal as a permanent employee even if in the same role)*
- *The recruitment process may not have the same rigor as onsite employment*
- *Due to the nature of contract employment workers can be terminated at any time for any reason/or no reason given. Due to the conditions of their employment these employees often do not fit within the parameters of Fair Work Commission, so they have no recourse*
- *Because of the transient nature of the contract workforce a minimal increase in the hourly rate is enough for some contractors to move frequently from one site to another (this actually pushed the hourly rate of statutory officials into unsustainable territory when the mining sector was experiencing a boom). This constant movement between sites means that a thorough understanding of the site, the onsite processes and an understanding of the workforce is hard to achieve. No consistency!*
- *I am aware of numerous individuals who have identified safety issues who have been terminated or whose contracts were not renewed. Whilst not the norm this culture exists.*[172]

The CFMMEU stated its support to have critical safety statutory roles for coal mining operations to be an employee of the coal mine operator as the obligations and responsibility for the health and safety of mine workers lies directly with the roles and responsibilities they carry out on every shift.[173]

Additionally, Mr Smyth from CFMMEU argued:

> *We certainly support statutory officials being employed by the coalmine operator and we actually go a step further. We also think there should be some consideration given to the role of supervisors. We say that supervisors carry out some critical safety roles, and in our submission we provide what we see as an inspection regime for them and open-cut examiners. We have also gone to the effort of putting in some proposed regulations that could apply to deputies and open-cut examiners that would really focus in on their core role of health and safety.*[174]

Mr Phillip Taylor stated:

> *I do work alongside labour hire examiners in the workplace that I work in and I can assure you that every one of them would like to have a permanent shirt. I do not get the comment made earlier about these labour hire statutory officials wanting to remain as labour hire. That says to me that those people are putting lifestyle ahead of their accountabilities or responsibilities. That is what that says to me.*[175]

Mr Dan Proffitt claimed that statutory officers and coal mine workers often seek different employment arrangements and that this difference is neglected in the Bill:

> *I believe the reason behind the perception this change is needed has been incorrectly interpreted from the safety reset feedback. The majority of contractors that do the statutory roles within our*

172 Submission 42, p 4.

173 Public hearing transcript, Moranbah, 3 March 2020, p 21.

174 Public hearing transcript, Moranbah, 3 March 2020, p 12.

175 Public hearing transcript, Moranbah, 3 March 2020, p 22.

industry actually prefer to remain contract. This is in stark contrast to contract coal mine workers on the shop floor level who are constantly chasing a permanent role.[176]

A number of submitters did not support the requirement for statutory office holders under the CMSHA to be employees of the coal mine operator arguing that this was based upon a simplistic understanding of the industry and would result in a number of unintended adverse consequences.[177]

2.3.1 Consultation on these amendments

Several submitters expressed concern that there was no industry consultation on the amendment relating to employment requirements for statutory officer holders.[178]

The industry has been surprised by the addition of Division 2 amendments which were not previously included in the consultation draft released in 2019. There has been inadequate explanation and justification as to why this is necessary without any specific data to back up the claims. This change is unworkable in the mining industry and will result in considerable administrative burdens and drive away experienced professionals and not achieve a better safety culture.[179]

Contract self-employed statutory officers highlighted that they were not consulted on the Bill which would significantly impact their livelihoods and work situations.[180]

Submitters noted the lack of evidence to support the justification for this amendment.[181] The committee sought to determine the basis of these amendments and was informed by Mr Djukic from DNRME:

Following events last year, such as safety resets that happened at all Queensland mines and quarries, what that really highlighted is a reporting culture where employees—persons—are unafraid of reporting safety risks…[182]

The fatality review did not really touch on the reporting culture in terms of contractors versus employees. That is to say, it did not find any evidence of anything different between the two groups. In terms of a fear-of-reprisal reporting culture, these were more observations arising out of the safety reset sessions that occurred last year. I understand that fear of reprisal for raising safety concerns was repeatedly raised by participants in the safety resets as a concern.[183]

Similarly, Mr Stone from DNRME informed the committee:

…I will just characterise the safety resets. Following several deaths in the mining and quarrying industry, Minister Lynham called industry stakeholders to a meeting in Parliament House. Arising from that meeting was a commitment to hold statewide safety resets. Some 52,000 workers participated in 1,197 resets across the state, and we believe that represents some 96 per cent of the workforce.

During those safety resets, workers discussed a number of aspects. They discussed the safety culture at their site. They discussed the nature and cause of the accidents that had happened within industry. They talked about critical hazards, fatal hazards and whatever was specific to

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176 Submission 46, p 2.

177 See submissions 27, 30, 50, 54, 56, 62, 64.

178 See submissions 2, 10, 15, 18, 19, 22, 26, 30, 45, 54, 59, 62, 67; Mrs Bertram, Queensland Resources Council, public hearing transcript, Brisbane 3 March 2020, p 18.

179 Mr John Anger, submission 18, p 3.

180 Mr David Brosnan, submission 24, p 2.

181 See for example submissions 33, 46.

182 Public briefing transcript, Brisbane, 3 March 2020, p 3.

183 Public briefing transcript, Brisbane, 3 March 2020, p 3.

that site. You will understand that they cover large, open-cut coal mines, underground mines, quarries; and indeed some safety resets were held in head offices and outside of the state. Arising from those safety resets, feedback included fear and concern over raising genuine safety incidents. While reprisal provisions are included in the Mining and Quarrying Safety and Health Act, nonetheless that concern over reprisal was raised in those resets and to the department.[184]

Mr Jason Hill from the CFMMEU stated:

I got to 11 resets at 11 different mines. What I took away from those resets are concerns about raising safety issues, lack of training or inadequate training, and inadequate supervision. That was not just 11 resets at one mine: that was 11 resets at different mines in that week. Section 141 provides for safety inspections of workplaces. Over the last 12 months I have been asking about that at every mine I go to, and not one mine has actually complied with that part of the legislation.[185]

BHP outlined their participation in the Queensland mining industry's safety resets:

We actively participated in the Queensland mining industry's safety re-set during July and August 2019. More than 11,600 employees and contractors across our Queensland operations took part in approximately 400 sessions, which provided a forum for full and frank conversations about safety. While the end of August 2019 marked the official completion of the safety re-set, it has in no way reduced our focus on safety.[186]

The committee sought a quantification of the feedback from the safety resets about fear of raising genuine safety incidents. DNRME advised:

22 people raised employment status as a reason for not raising safety issues. Examples of comments from respondents include: the importance of leadership in addressing safety issues and the impact this had on safety culture; power imbalance between management and a casual workforce; disconnection between management and the on-the-ground safety realities faced by the workforce; casualisation of the workforce and the importance of a permanent, experienced, well-trained workforce in improving safety culture.[187]

2.3.2 The inability of contract statutory office holders to make safety complaints

The committee heard that currently contract or labour hire OCEs are subject to reprisals and adverse treatment when they raise safety concerns:

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

Many a Labour Hire OCE has been told your services are no longer required then moved onto the next mine, then when they have dig again, get the same again and again.[188]

Mr Wade Klowss supported the Bill's amendment to specify that only persons who are employees of a coal mine operator may be appointed as certain statutory office holders as this would allow greater reporting of safety issues at coal mines:

184 Public hearing transcript, Brisbane, 3 March 2020, p 34.

185 Public briefing transcript, Moranbah, 3 March 2020, p 13.

186 Submission 56, p 1.

187 Department of Natural Resources, Mines and Energy, correspondence dated 9 March 2020, p 2.

188 Name withheld, submission 13, p 3.

As a statutory official myself I see a greater need for permanent officials so safety becomes our priority. I myself am a permanent statutory official and have been moved from the coal face for challenging our safety and health management system in regards to coal mine workers having required fatigue breaks. I believe this is a step in the right direction and hope this bill passes to create a safer industry and a better future for the industry in regards to safety and health and have zero harm to our coal mine workers.[189]

In Moranbah, Mr Brodie Brunker informed the committee:

I have witnessed firsthand the vulnerability of contract deputies being overruled by management even though the deputy is ultimately responsible for the area of the mine, but they know if they do not follow the instructions given, even though they do not agree with the decision, they will either be pulled into the office and reprimanded or, worse, shown the door. Having all critical safety roles employed on a permanent employment type will give the person the confidence to stop the job regardless of the circumstances and not fear for their job.[190]

Similarly, Mr Steve Watts from the CFMMEU provided an example of the difficulty contract employees have in speaking out against unsafe practices:

In my previous job I was a permanent deputy at an underground mine. I had contract statutory officials make complaints through me as a union safety representative on site because they were too scared. Another example I have is that I was requested to do a job which I believed was unsafe so I refused to do the task. What did they do? They got a contract deputy to do the job on night shift. I found out that he had done it and when I saw him in the morning I said, 'Mate, what made you do that?' He said, 'I just wanted a job.'[191]

Mr Jason Meikle provided several examples which illustrated that permanency of employment did impact on an individual's ability to call-out safety issues. Mr Meikle stated:

I have personally witnessed Open Cut Examiners employed by labour hire companies not being able to do their job as they are in fear of reprisals.[192]

AWU advised:

AWU Members have in recent time reported their reluctance to raise safety issues due to a fear they might face reprisals for negatively effecting productivity and output. This is particularly the case for casual, labour hire and other temporary employees whose insecure employment status and lack of guaranteed ongoing work leaves them at greater risk of reprisal. Whether or not workers are at serious risk of repercussion for raising safety issues, it is evident that a very real fear exists amongst the mining and quarrying workforce that raising safety issues will result in an adverse impact on their employment, creating an environment in which hazards and risks can potentially remain unrectified.[193]

A large number of submissions expressed concern with the assumption that persons appointed to positions as employees of the coal mine operator would report safety and health issues more freely.[194] Mr Darth Clemersen argued that:

The assumption that removing the ability for an individual contractor to hold a statutory position in a coal mine will relieve the anxiety of the coal mine worker to, "make safety complaints, raise

189 Submission 16, p 1.

190 Public hearing transcript, Moranbah, 3 March 2020, p 21.

191 Public briefing transcript, Moranbah, 3 March 2020, p 15.

192 Submission 70, p 1.

193 Submission 60, pp 5-6.

194 See for example submissions 1, 3, 4, 5, 11, 22, 27, 43.

safety issues, or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.", seems to be based off an emotional response and subjective data… It would be intellectually dishonest to suggest contract statutory holders of a coal mine are afraid to speak when the industries attitude and culture toward health and safety has had a significant change for the good.[195]

Submitters also argued that permanent employment would not necessarily ensure that statutory officers would report safety and health issues:

In my opinion, making a law that would require Statutory Officials to be directly employed by the company will not change anything nor anyone's behaviour. If a Statutory Official is going to be pressured into making unsafe decisions then the same will happen with a permanent employee (they still have yearly bonuses and still run the risk of being moved to another part of the mine or changed to a different roster).[196]

Submitters also noted that they had not experienced reprisals, regardless of their employment status:

With 22 years in coal mining activities, 13 years as an ERZ controller/ Deputy, having held a permanent deputy position for 4 of those years and 9 years as a contract deputy. I have held positions in many of the Bowen Basin mine sites. At no stage has there been any reprisal against myself as either a contract or permanent deputy.[197]

Mr Shane Anderson informed the committee:

I have been working as a Statutory Official for longer than seven years and in this time I have worked for several Mine Operators as well as more recently as a subcontractor. From my experience in this role, on both sides of the proverbial fence, I can tell you that it does not matter who or how you are employed in a statutory role that determines how you ensure that the workers you are responsible for remain safe and come out of the mine the same way they went in. It comes down to the individual statutory official's knowledge, ethics, training and skill.[198]

In addition, it was submitted by Mr David Brosnan that:

As a statutory official it doesn't make any difference to whom you are employed by. Statutory officials who are lazy, don't speak up when required, and who don't lead from the front with safety matters are a concern for the industry.[199]

Peabody Energy Australia argued:

Every worker at any Peabody site has the fundamental right to stop work, including production activities if they believe they or others are at risk. This right applies to all personnel working at a Peabody site, inclusive of Contractors.[200]

A number of submitters noted that the legislative requirements relating to statutory officials to provide a safe work environment for all coal mine workers are not guidelines but a legal obligation, and therefore are not undertaken differently as a result of employment type.[201]

195 Submission 1, pp 1-2.

196 Mr Andrew Ede, submission 21, p 1.

197 Mr Legh Thomasson, submission 23, p 1.

198 Submission 3, p 1.

199 Submission 24, p 1.

200 Submission 59, p 1.

201 Submissions 1, 7, 11, 12, 17, 19, 22, 23, 40, 67.

Submitters highlighted that current legislative protections are in place to protect people from reprisal.[202] The CMSHA, Part 17 General 275AA *Protection from reprisal*, specifically addresses protection from reprisal:

275AA Protection from reprisal

(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, the other person—

(a) has made a complaint, or in any other way has raised, a coal mine safety issue; or

(b) has contacted or given help to an official in relation to a coal mine safety issue. Maximum penalty—40 penalty units.

(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.

(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.

(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.

(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

(6) This section does not limit or otherwise affect the operation of the Public Interest Disclosure Act 2010, chapter 4, part 1 in relation to reprisals.

(7) In this section— coal mine safety issue means an issue about the safety or health of a person or persons while at a coal mine or as a result of coal mining operations.

Additionally, s 273 – *Withdrawal of persons in case of danger*, s 274 – *Where coal mine worker exposed to immediate personal danger* and s 275 – *Representation about safety and health matters* address health and safety concerns in the workplace and the individual's rights.[203]

The CFMMEU submitted that despite the CMSHA providing protections and general reprisal provisions for all coal mine workers under S 274 and S 275AA, mine operators can and do circumvent this protection:

> *In fact, it is rife in the area of LH [Labour Hire] employment in which coal mine workers are targeted and the CFMMEU are currently involved in several cases in which its members who are LH employees have been the victims of reprisal action. We have also seen it occur with statutory officials employed in LH & contractual roles. The employer who is normally the mine operator will direct the employer of the LH or contractor they can no longer work on site and withdraws their access to site? They will then state it has nothing to do with what occurred but the role is no longer required or available. This has occurred [at] most of the major operators within the coal industry.[204]*

Several submitters argued that statutory office holders who effectively seek out and report dangerous conditions and safety issues are in high demand and sought after by employers, and are secure in their employment. Mr Dan Cawte stated:

> *Statutory office holders who find, report and actively manage dangerous conditions and safety issues keep the risk to coal mine workers at an acceptable level, and, by keeping coal mine*

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202 See submissions 5, 8, 21, 33, 41, 43, 46, 54, 56, 67, 68.

203 *Coal Mining Safety and Health Act 1999.*

204 Submission 77, p 11.

workers safe, also keep the site senior executive (SSE), other senior position holders and the coal mine operator (CMO) safe.[205]

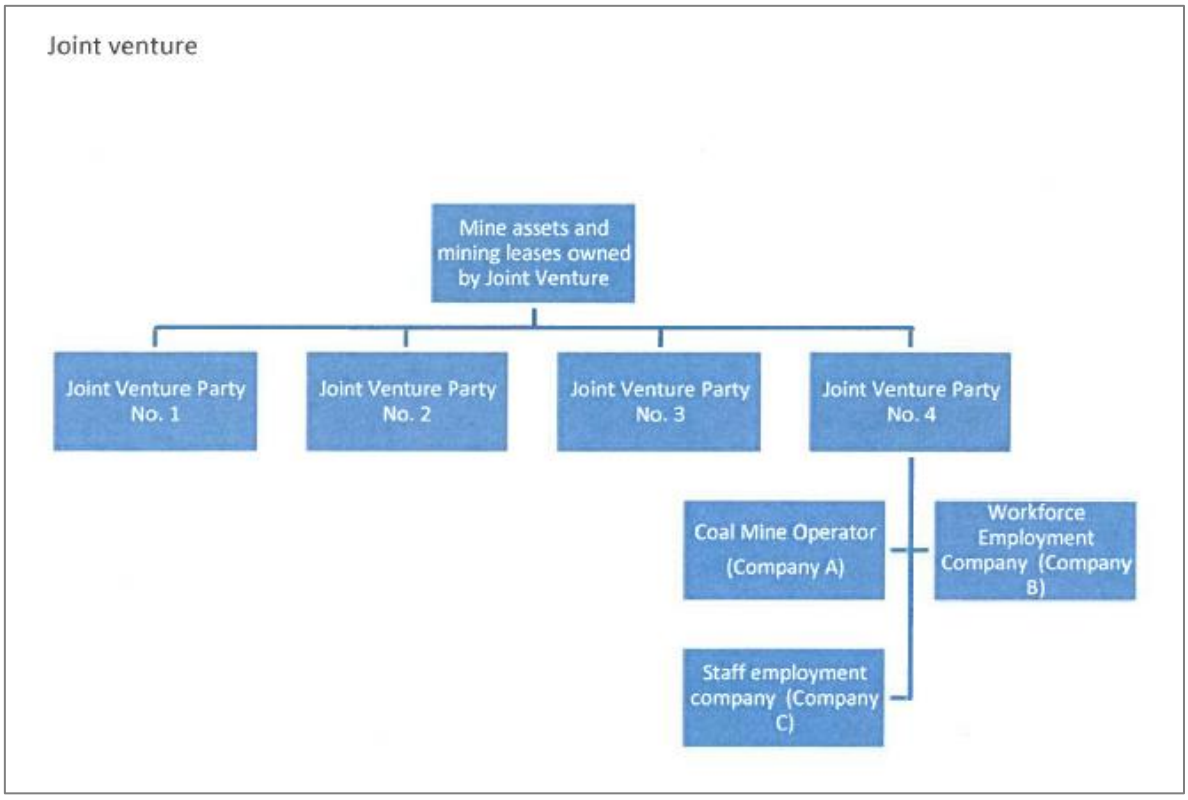
2.3.3 Consequences for mining operations and the mining workforce

A number of mine operators and submitters argued that the requirement for statutory office holders to be employed by coal mine operators was an oversimplification of contemporary corporate structures and introduces a significant and onerous restriction on the way in which mines operate across Queensland.[206] QRC noted that the requirement for all statutory position holders at a coal mine to be employed by the coal mine operator represents an unreasonable and unjustified regulatory burden which was not subjected to consultation with industry or a regulatory impact assessment. Additionally, QRC stated that the proposal may breach Queensland's fundamental legislative principles.[207] The committee was informed that for many mine operations across Queensland the employing entity of workers is different to the entity operating the mine.[208]

Peabody staff at some mines may not currently employed by the CMO. They are employed by another Peabody company that employs our staff across our Australian business and mines. I would expect that others in the industry are also structured this way.[209]

Mr Macfarlane from the QRC provided an example of common company structures in the resources industry illustrating the arrangements for employing entities in mining operations (see Figure 1).

Figure 1: Example of employment structures of mining companies



Source: *Queensland Resources Council, tabled paper, public hearing, Brisbane, 3 March 2020.*

205 Submission 11, p 1.

206 See submissions 30, 50, 54, 56, 62, 64.

207 Submission 54.

208 Glencore, submission 30.

209 Mr John Anger, submission 18, pp 3-4; see also submissions 19, 30, 45, 48, 54, 56, 59.

Mr Macfarlane noted:

> *… is not an issue of permanency of employment—these people are permanently employed—it is an issue of who are they employed by. In the complexities of corporate structures … companies operate in the coal industry on the basis that they are in joint ventures, they have partners and they have structures within individual companies. You have heard from some companies today who are in joint ventures where the joint venture does not actually employ the person but the person is in permanent employment. That is the first point. The second point is that at no stage in any part of the Brady review was there any reference to casually employed SSEs, for want of a better word, having any worse a safety reporting system than a permanent employee.*[210]

Peabody Energy Australia argued that the proposed amendment was unworkable in the mining industry given the current corporate structures that are in place and would result in considerable administrative burdens for industry for no positive impact to safety culture in the mining industry:

> *Many of our statutory holders are employed by a Peabody subsidiary that employs Peabody staff across our Australian operations, not the relevant mine CMO. Some of our statutory holders may be employed by a mine specific subsidiary that employs our hourly workforce employees. These subsidiaries are not usually the CMO. All are Peabody employees and have the absolute right (as is our expectation) to raise safety concerns no matter who their employer is on paper. Transferring all of these existing employees carries unnecessary administrative burdens and will have no positive impact on changing the safety culture. Issues will also arise in certain joint venture arrangements if the CMO is not the employing entity.*[211]

AngloAmerican Site Senior Executives noted in their submissions:

> *This is a complex area where there has been no consultation with the industry to understand the likely implications, including a shortage of statutory positions in Queensland that cannot be filled under the current system. The requirement would also necessitate changes to hundreds of contractual arrangements for mining services, which apart from the compliance burden, may also have other unintended consequences for our operations that we have not yet had the opportunity to consider.*[212]

Ms Liz Watts from the Queensland Coal Site Senior Executives Forum highlighted that the amendment would challenge staffing requirements in the industry:

> *We think that there are … misconceptions that exist in relation to the employment of statutory officials as contractors. The first is that the legislation, as it is proposed, would simply mean that those employed currently as contractors could switch across to being employees. However, this is not the reality of what would play out as the industry requirements are currently being met by contractors with statutory qualifications working to satisfy the current requirements across a number of operations. If this option is removed, the industry has an immediate deficit in the number of statutory people to fill the current requirements.*[213]

In response to matters raised by stakeholders in relation to the provisions in the Bill requiring statutory office holders to be employees of the mine operator, DNRME stated:

> *… it is a matter of government policy to require that statutory office holders are employees of a mine operator. There will be a twelve-month transitional period before statutory officer holders will be required to be an employee of a mine operator. The intent is to ensure that statutory*

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210 Public briefing transcript, Brisbane, 3 March 2020, p 15.

211 Submission 59, p 4.

212 Submission 62, p 2; see also submission 31.

213 Public hearing transcript, Moranbah, 3 March 2020, p 3.

office holders can make safety complaints and raise safety issues without fear of reprisal or impact on their employment.[214]

Given that submitters highlighted that a transitional period of just one year will not allow sufficient time to make the necessary corporate and contractor arrangements in relation to the appointment of statutory office holders, the committee recommends extending this period from twelve months to eighteen months.

Recommendation 4

The committee recommends that clause 10 of the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 be amended to allow a transition period of eighteen months for the amendments relating to statutory office holders.

2.3.4 Leaving the industry

Submitters argued that the amendments requiring statutory office holders to be employees of a mine operator will result in experienced people leaving the industry,[215] and will lead to greater shortages of appropriately qualified and experienced people.

The skilled group that makes up statutory officers in Queensland is a small population. They are hard to find. It is a very onerous responsibility and it is a skill, and there are certain steps you need to take to qualify. There are individuals who choose to work either short term between sites or for various companies to suit themselves. If we were to put this mechanism in place, that would bring that population under further pressure at a time when we can ill afford to do that.[216]

Similarly the committee was informed:

There are limited statutory holders in Queensland. These people may choose to leave the industry during the next 12 months especially those closer to retirement. This will not drive a better safety culture. It will be difficult to fill existing roles and to find relief coverage. Shortages of experienced people will impact safe operations.[217]

The MMAA submission noted that in a survey of its members, 50% of the respondents or 30% of all canvassed SSEs are seriously considering leaving their SSE position if the legislation is enacted in its current form.[218] Similarly BHP submitted:

Requiring statutory office holders to be employees of the coal mine operator would restrict this flexibility and may lead a number of statutory office holders to exit the industry due to an inability to find suitable arrangements (they may also not want the potential personal exposure from the proposed industrial manslaughter offence that does not expressly exclude site-based personnel).[219]

2.3.5 Restrictions to an individual's choice of employer and type of employment

Concerns were raised by submitters that the requirements for statutory office holders under the CMSHA to be an employee of a coal mine operator may infringe the legislative principle contained in

214 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 34.

215 See for example submissions 5, 8, 11, 12, 18, 19, 26, 41, 43, 45, 59.

216 Mr Robert Telford, BHP, public hearing transcript, Brisbane, 3 March 2020, p 2.

217 Peabody Energy Australia, submission 59, p 4.

218 Submission 47; also see Idemitsu Australia, submission 33, p 2; Ms Liz Watts, public hearing transcript, Moranbah, 3 March 2020, p 3.

219 Submission 56, p 5.

s 4(3)(g) of the *Legislative Standards Act 1992* by adversely affecting the rights and liberties of an individual's choice of employment.[220] This issue is discussed in detail in section 3 of this report.

Many submitters argued that freedom of choice is a right of employment.[221] Mr Darth Clemerson argued:

> *Every individual should have the right to choose who they work for and under what agreement they will work under, provided it is agreed upon by themselves and the company with the understanding by both parties that the individual holds obligations under the relevant coal mining legislation.*[222]

Kestrel Coal Site Senior Executives and senior managers stated:

> *From an individual's perspective, it's no secret that comparable rates of pay for contractors are better than their permanent counterparts for equivalent jobs. In our experience a contractor who works all year can expect to earn between 150-200% more than a permanent employee over the same time period. Contractors often cite flexibility as a key reason; they have the freedom to decide which contracts to take, whether or not to extend and if an individual wishes to take a few months off, they are able to do so provided that they've set money aside.*[223]

Idemitsu Australia stated:

> *Removing that choice, and the potential financial and tax benefits that accompany it, will only serve to make other coal mining jurisdictions more attractive for those workers.*[224]

2.3.6 Covering leave and work absences

A number of submitters highlighted that contract statutory officers are employed by mine operators to cover periods of leave or absence for the statutory officers employed by the mine.[225]

> *Freelance statutory office holders, and businesses that provide statutory office holder coverage, fill the vital roles of providing both full time coverage of statutory positions, and statutory coverage during periods of absence by the person normally filling the role. Unplanned absences of personnel, including statutory office holders, is an everyday event. The existing legislation allows for these absences to be filled by any qualified and competent person. Taking this facility away from the CMO and SSE will lead to mines shutting down for the duration of the absence and coal mine workers being stood down. In some circumstances the shutdown could lead to significant negative flow on effects, such as flooding of a mine, which would jeopardise the safety and stability of the mine, and the ongoing livelihood of the coal mine workers affected.*[226]

Similarly Glencore submitted that current contract employment practices allow persons holding statutory functions on a permanent basis to take temporary leave from their positions, and enables temporary cover for statutory roles to be filled by a much broader pool of suitable candidates.[227] Mr Macfarlane from QRC, outlined that difficulty in covering SSE positions and the larger implications for the mining industry:

> *Getting new SSEs is proving to be a very difficult challenge for the industry because of the onerous conditions that already exist. … without an SSE on site the mine cannot operate, so the mine will*

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220 See for example submissions 1, 3, 4, 8, 10, 11, 23, 46, 54, 59.

221 See for example submissions 3, 4, 6, 11, 23.

222 Submission 1, p 1.

223 Submission 64, p 3.

224 Submission 33, p 2.

225 See submissions 6, 41.

226 Mr Dan Cawte, submission 11, p 2.

227 Submission 30, p 7.

literally shut and all the employees at that mine will be stood down. That is the immediate consequence if we are not able to fill all of the positions.[228]

The AIHS argued that proposed amendments to ss 57 and 61A regarding temporary absences of SSEs and ventilation officers lack logic and fairness, and that the current market is unable to sustain the employment needs of statutory officers, in particular leave requirements for ventilation officers:

The AIHS also understands that while many larger mines have succession/back-up plans for Site Senior Executives, there are inadequate qualified professionals, and inadequate new entrants with the necessary skills, to fulfil the demand for Ventilation Officers… Fair Work Australia instruments regarding parental, compassionate and personal leave are unable to be fulfilled under this proposal – whereby a suitably-qualified worker (whether contracted or otherwise) could not backfill a role while the appointed person takes their necessary leave without their position being filled full time so that they cannot return to their substantive role.[229]

The Mine Ventilation Society of Australia highlighted that a mine would need to employ more than one ventilation officer to cover any absences.[230]

The MMAA supported the amendment that persons appointed to critical safety statutory roles for coal mining operations should be employed by the coal mine operator, however MMAA argued:

…there are a number of circumstances where provision should be made for operations to continue when incumbents are not available. The most obvious circumstance being the replacement of the roles where the SSE and Underground Mine Manager take leave or suffer absences due to illness. The Association believes that during temporary absences that mining qualifications and experience are the two essential elements to be considered.[231]

2.3.7 Benefits to industry of contract statutory officers who work at multiple mine operations

Many submitters argued that contract statutory officers who work at multiple mine operations are better able to improve the safety culture of a mine.[232] Submitters highlighted that the ability to work at multiple mine sites allows statutory office holders to gain broad and positive industry experience which can then be applied to other mining operations.[233] Requiring statutory office holders to be the employee of the coal mine operator will diminish their experience and knowledge, and reduce safety outcomes.[234]

Mr James Palmer from BHP outlined:

Sometimes it is the people who are coming in under contract or different employment models who are not actually associated with that mine who are more likely to call out some of the things that they see with a fresh set of eyes as they do not have the long-time cultural engagement with the rest of the people on that site. They are more willing to call things out rather than less.[235]

Mr Andrew McDonald from the SSE Forum confirmed the benefit of contractors to site to raise safety concerns:

Our mine is set up with around 70 per cent full-time employment and 30 per cent contractors. We did a review back through our hazard reporting process for the last 12 months. When I pulled

228 Public hearing transcript, Brisbane, 3 March 2020, pp 16-17.

229 Submission 27, p 2.

230 Submission 61.

231 Submission 47, p 4.

232 Mr Glen Alsemgeest, submission 15, p 2.

233 Mr Terry Young, submission 20; see also submissions 11, 24, 41, 68.

234 Mr Dan Cawte, submission 11, p 1.

235 Public hearing transcript, Brisbane, 3 March 2020, p 4.

> *the numbers out, it surprised me. Some 68 per cent of all hazards reported came from the contractor base and only 32 per cent from the full-time employee base. To me, that is telling us that our full-time employees have become very acclimatised to it. It is what they do every day. They are starting to move past hazards that the contractors are seeing and recognising from other sites. It has been driven into them, and they are able to transfer that back to us.*[236]

Additionally, the nature of contract work required that contract statutory officers maintain their competencies and skills to be professionally competitive.[237] Mr John Phillips stated:

> *In my experience, many long term permanent employees (particularly ERZ Controllers) who rarely vary tasks are not good at maintaining their competency as Statutory Supervisors. Contract Statutory Supervisors who go between sites are continuously required to maintain knowledge and skill as part of lengthy induction and appointment processes.*[238]

In contrast, some submitters argued that being a contractor at a mine operation did not require a commitment to the safety culture and practices of the mine. Mr Steve Watt from the CFMMEU stated:

> *I asked him his opinion on statutory contracts, statutory ticket holders, and he said, 'They're only in it for the money.' I asked, 'Why is that?' He said, 'Because they don't care about the mine. They don't belong. They don't care about the people. They come and get their money and then they leave.' That is as simple as it can be.*[239]

2.3.8 Committee comment

The committee heard and read extensive evidence regarding the issue of extending permanent employment to statutory office holders. Opinions on this matter also included informal representations outside of the formal hearing at Moranbah, which provided an opportunity for individuals who were unable or unwilling to make written submissions. This evidence focused on the ability to raise matters of safety in coal mines without suffering workplace retribution, and the capacity or reluctance of workers to raise these matters depending on the permanence or security of their employment. The committee considers that there is a need to support all statutory office holders so that they can make safety complaints and raise safety issues without fear of reprisal or impact on their employment.

In light of noticeable differences between written submissions and feedback from workers outside of formal hearings, the committee is concerned that protections from reprisals in under ss 275 and 275AA of the CMSHA are insufficient and are not being adequately enforced. The committee considers that while this situation seems at odds with written evidence, there is need to enhance the application and level of protection. The committee notes that that s 275AA of the CMSHA and s 254A of the MQSHA, contain a penalty of 40 penalty units for reprisal action. This is in contrast to similar reprisal provisions in the WHSA, which provide for a maximum penalty of 1,000 penalty units. Given that this Bill seeks to ensure there is consistency in protection of the safety and health of all workers across all Queensland industries, the committee has formed the view that the penalty for reprisal action under s 275AA of the CMSHA and s 254A of the MQSHA should be amended to align with the reprisal provisions in the WHSA. The committee notes that this is outside the scope of the current Bill. However, the committee is sufficiently concerned with the issue of reprisals to bring this matter to the Minister's attention and raises the need for more provisions regarding reprisals to be considered. The committee is also concerned that as part of this proposal, consideration should be given to increasing the capability for mine safety inspection in Queensland.

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236 Public hearing transcript, Moranbah, 3 March 2020, p 7.

237 Mr Steffan Ryder, submission 7, p 1.

238 Submission 6, p 1.

239 Public hearing transcript, Moranbah, 3 March 2020, p 13.

Recommendation 5

The committee recommends that the Minister for Natural Resources, Mines and Energy give consideration to amending section 275AA of the *Coal Mining Safety and Health Act 1999* and section 254A of the *Mining and Quarrying Safety and Health Act 1999* to align the penalty for reprisal action with the reprisal provisions in the *Work Health and Safety Act 2011*.

The committee notes the concerns expressed by industry that the transitional period of one year as outlined in the Bill will not allow sufficient time to make the necessary corporate and contractor arrangements in relation to the appointment of statutory office holders as employees of the coal mine operator. As such the committee has recommended extending this transition period from twelve months to eighteen months (see Recommendation 4).

2.4 Clarification of costs orders

The Bill retrospectively validates costs orders made before an Industrial Magistrates Court for a proceeding for an offence against the CMSHA, the MQSHA and the P&G Act that were unlawfully made. The explanatory notes state:

> *Over the past 20 years, costs have been awarded in criminal proceedings in the Industrial Magistrates Court. These costs have been sought by parties to litigation, and ordered by the courts in good faith, on the basis that they were lawfully made. The amendments will benefit parties to a proceeding by validating costs orders previously made for proceedings under the Coal Mining Safety and Health Act 1999, the Mining and Quarrying Safety and Health Act 1999, and the Petroleum and Gas (Production and Safety) Act 2004G Act prior to December 2014.*[240]

Mr Djukic from DNRME informed the committee:

> *The objective of this amendment is to preserve what has been understood to be the status quo. Under the current Industrial Relations Act provisions, for a prosecution the Industrial Relations Act does not allow the court to order costs for legal representation. That was largely something misunderstood by all parties previously, so the court has in fact been awarding costs in these matters. The purpose of these amendments is simply to validate those arrangements so that those matters are left undisturbed. They will also clarify that, for future matters that are brought within the Industrial Magistrates Court, professional costs can be payable upon the conclusion of the matter, much like in the mainstream court system.*[241]

2.5 Explosives regulation-making power

The Bill proposes amendments to the regulation-making powers under the Explosives Act to broaden security clearance holder notification requirements and to enable the disclosure and publication of limited security clearance and authority holder information, including in an online register. The Bill will align regulation-making powers relating to security clearances with existing powers regarding authorities. It will also provide for a register of authorities and security clearances, to support independent verification of a person's security clearance or authority status by industry.[242] DNRME explained:

> *On 1 February 2020, the new security clearance regime provided for in the Land, Explosives and Other Legislation Amendment Act 2019 commenced. The regime is aimed at ensuring only persons assessed as suitable to have unsupervised access to explosives do so. Under the regime, holders of a security sensitive authority (e.g. holders of an explosives licence or permit associated*

240 Explanatory notes, p 11.

241 Public briefing transcript, Brisbane, 3 March 2020, p 5.

242 Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, pp 3-4.

with security sensitive explosives) have an obligation to ensure certain persons associated with their authority, including employees who have unsupervised access to explosives, hold a valid security clearance. A failure to do so may be grounds for suspension or cancellation of the holder's authority.

The Explosives Regulation 2017 requires security clearance holders to notify the Chief Inspector of Explosives of any change in circumstance that may affect their suitability to continue to hold a clearance. However, there is no legislative requirement for a security clearance holder to notify other persons (e.g. their employer) if the status of their clearance changes.[243]

The explanatory notes state that the proposed changes to regulation-making powers under the Explosives Act are consistent with existing powers relating to explosives authorities and necessary for the effective administration of the explosives authority and security clearance regimes.[244]

The Australasian Explosives Industry Safety Group (AEISG) stated that 'explosives have long been subject to tight legislative controls for community safety and security reasons' and that these controls are acknowledged, understood and supported by the explosives industry.[245] AEISG submitted that it:

- fully supports introduction of security clearances as outlined in the *Land, Explosives and Other Legislation Amendment Act 2019*
- supports the Bill's proposed amendments to the regulation-making powers in s 135(2)U) of the Explosives Act to enable regulations to address conditions and other requirements applying to security clearances
- supports the proposed new s 135(2)(1) to enable the regulations to address relevant registers of authorities and security clearances and to provide for the disclosure or publication of information about the status of such authorities and security clearances
- looks forward to consultation on the ensuing relevant changes to the regulations.[246]

2.6 Financial assurance

The Bill includes amendments aimed at reducing the financial risk to the state of resource operators defaulting on rehabilitation responsibilities, and at improving rehabilitation of abandoned mine sites and operating plants. These amendments follow on from the financial assurance reforms of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* which commenced in April 2019.

Only those aspects of the Bill which received comment from submitters have been included in the following sections.

2.6.1 Change in control of a resource authority

The Bill provides for new processes to assess an entity's financial and technical ability to comply with conditions of a resource authority when there is a change of control. Clause 89 introduces additional criteria for an assessable transfer when there is a change in the ownership of a resource authority as a result of a sale (direct change of control). Under the Mineral and Energy Resources (Common Provisions) Regulation 2016, currently the Minister does not consider the capacity to fund the estimated costs of rehabilitation in approving an assessable transfer.[247] The amendments would

[243] Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 3.

[244] Explanatory notes, p 12.

[245] Submission 9, p 1.

[246] Submission 9, p 1.

[247] Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 5.

require the changed holder of the resource authority to show that they have the financial resources to undertake the rehabilitation before the transfer can be registered.[248]

Similarly when there has been a change in the controlling entity holding a resource authority but there has been no transfer of the resource authority (indirect change of control), the Bill would introduce a process to enable the Minister to be notified and assess whether the new holder has the ability to comply with the conditions of the resource authority. The Bill would enable the Minister to amend the conditions of a resource authority if significant risk to compliance is identified.[249] The Bill's provisions relating to indirect change of control apply in situations where there has been a change of holder under s50AA and s46 of the *Corporations Act 2001* (Cth).[250]

Submitters raised several matters in relation these amendments.

2.6.1.1 Limiting conditioning power, definition of 'financial resources', and criteria for assessing the 'financial and technical capability'

The QRC contended that the Bill introduces a power to impose or vary conditions without limitation and that there is no link between the risk identified and the conditioning power. QRC submitted that the power to set conditions should be limited to mitigating risk related to financial and technical resources.[251]

DNRME advised that it 'considers that the provision is already sufficiently limited so that the conditioning power can only be used in the context of mitigating a risk arising from a changed holder's technical and financial resources' as outlined in the explanatory notes for the relevant provisions.[252] Further DNRME stated:

> *The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change of control and be consistent with the purpose of the Act.*[253]

The QLS submitted that the reference to 'financial resources' is undefined, and that a guideline as to how the decision-maker would assess a transferee's financial resources to undertake estimated rehabilitation costs may assist, but defining the meaning in the legislation would be preferable.[254] The QLS was also concerned that the Bill is not clear about whether the technical and financial resources of all holders will be taken into account where a change of control involves multiple entities.[255]

In response to these matters, DNRME advised:

> *The requirement to demonstrate technical and financial resources already exists for an applicant that applies for a resource authority or a transfer of a resource authority. To assist these applicants, the department has published a Financial and Technical Capability Guide that details how applicants for resource authorities or transfers of resource authorities can demonstrate that they possess the requisite financial and technical resources. This guide will be updated to continue to provide guidance and certainty to resource tenure holders about these terms and reflect the amendments contained in the Bill.*[256]

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248 Explanatory notes, p 6.

249 Explanatory notes, p 6.

250 Bill, cls 38, 47, 50, 97, 117, 122, 132, 172, 181, 186, 194, 197.

251 Submission 54, p 30.

252 Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 40.

253 Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 40.

254 Submission 32, p 5.

255 Submission 32, p 6.

256 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 40.

2.6.1.2 Indicative assessment

The QLS and the Association of Mining and Exploration Companies (AMEC) submitted that a mechanism was needed to allow parties considering a transaction that may result in a change of control to seek an indicative assessment in advance, in order to discover what conditions might be imposed by the Minister.[257] AMEC noted that the possibility that the conditions of a resource authority could be changed by the Minister may discourage a potential purchaser of a mining lease from entering into the transaction. AMEC suggested that a mechanism similar to the process provided in s 23 of the *Mineral and Energy Resources (Common Provisions) Act 2014*, where the holder of the mining lease may apply for indicative approval for the change in control and a decision on what conditions will apply to the mining lease if the change of control occurs, would avoid uncertainty.[258]

The DNRME advised that an indicative approval had not been included in the Bill because indirect changes of control occur under the Commonwealth *Corporations Act 2001*. The department noted however that the Bill would amend the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to require the Financial Provisioning Scheme Manager to notify the department where an indirect change of control has occurred.[259] For an indicative assessment, resource companies negotiating an indirect change of control may apply for an 'indicative changed holder review allocation' under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*:

> *This assessment details the risk category that the Scheme Manager would allocate to the controlling entity should the indirect change of control occur. This indicative assessment becomes final if the change of control* takes *effect. If this assessment finds an increased risk (e.g. changes from 'low' to 'high'), this would likely indicate to proponents that the department may review the appropriateness of existing conditions for the resource authority. Conversely, should the assessment find no increased risk, the potential investor could be confident that the Minister is unlikely to impose or vary conditions regarding their financial capability.*[260]

2.6.1.3 Timeframes for assessment processes

The QLS and the QRC were concerned that time limitations are not stipulated for any decision making processes,[261] submitting that there needs to be a time limit on any decision to impose conditions following a change of control, as well as on the time the Minister will take to make a decision.

DNRME advised that a specific timeframe for the indirect change of control amendments was not included in the Bill in order to provide for circumstances where a new controlling entity does not notify the Financial Provisioning Scheme. DNRME stated:

> *… in most instances, the department will be notified of an indirect change of control by the Financial Provisioning Scheme Manager. In this circumstance where a the new controlling entity has complied with their obligation to notify the Financial Provisioning Scheme under the Mineral and Energy Resources (Financial Provisioning) Act 2018, the department will be required to act as soon as possible after receiving the notification in accordance with 38 of the Acts Interpretation Act 1954.*[262]

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257 Queensland Law Society, submission 32, p 5; Association of Mining and Exploration Companies, submission 66, p 2.

258 Submission 66, p 2.

259 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 38.

260 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 38.

261 Queensland Law Society, submission 32, p 6; Queensland Resources Council, submission , 54, p 30.

262 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 39.

2.6.1.4 Clarification of assessment processes

Additional concerns were raised by QLS and QRC about aspects of the proposed assessment process. These matters and the responses to these concerns provided by DNRME are listed below.

- Steps should be taken to ensure commercially sensitive information provided for assessments related to change of control is kept confidential, for instance by including obligations similar to those in Part 5 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018.*[263]

  DNRME advised that information received by the department will be subject to the *Right to Information Act 2009* processes and relevant protections will apply, and that:

  The information that may be received through the new powers to request information for indirect changes of control does not necessitate higher levels of protection as it will be similar to information that the department already receives for new applications or direct changes of control.[264]

- The Bill should clarify that the Minister has the power to apply or vary conditions only on transfers that have occurred after commencement.[265]

  DNRME advised:

  These provisions will not apply retrospectively. While the provisions apply to all tenures (granted prior to or after commencement), the new conditioning power will only apply to indirect changes of control that have occurred and taken effect after commencement.[266]

- Clarification is needed regarding the interaction between the existing notification requirement under s 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* and clause 102 of the Bill requiring notification of the scheme manager in the event that an indirect (or direct) transfer has occurred, to confirm that the existing notification will also be used (by the scheme manager) to notify the Minister and that there would be no additional obligation on the resource authority holder.[267]

  DNRME advised:

  The department will be largely reliant upon the notification from the Scheme Manager under the MERFP Act. However, if the department is made aware of an indirect change of control through other means, the Minister has the ability to request information about whether the indirect change of control has taken place. If concerned about the risk that the changed holder presents, the Minister may also request information about the financial and technical resources of the resource authority holder.[268]

2.6.1.5 Mandatory assessment and public consultation

While supportive of the provisions concerning change of control, WWF-Australia and the Environmental Defenders Office (EDO) suggested that the assessment by the Minister be required rather than discretionary and that the process should allow public consultation on the changed holder event and publication or access to documents relating to the change of control.[269]

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263 Queensland Law Society, submission 32, p 6.

264 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 40.

265 Queensland Resources Council, submission 54, p 30.

266 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 40.

267 Queensland Resources Council, submission 54, p 31.

268 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 40.

269 Submission 49, p 2; submission 53, pp 1-2.

DNRME advised that it considered that discretion is appropriate, as an assessment may not be required 'if a resource authority is transferred to a company and under the Financial Provisioning Scheme the risk rating is lower than the previous entity (which indicates that there is not an increased risk to the state)'.[270]

The department advised that public consultation is not proposed as it 'would be inconsistent with other assessments in relation to a holder's financial and technical resources currently under the Resource Acts and consultation is not considered necessary given the narrow scope of the conditioning power'.[271] Details of transfers in a direct change of control are kept on the register of resource authorities kept by the chief executive in accordance with the *Mineral and Energy Resources (Common Provisions) Act 2014* which is publicly accessible.[272]

Committee comment

The committee notes that the DNRME has published a Financial and Technical Capability Guide for applicants for resource authorities or transfers of resource authorities. Given the concern of stakeholders about how new processes will operate to assess an entity's financial and technical ability to comply with conditions of a resource authority when there is a change of control, the committee encourages the department to prepare guidelines to provide more clarity for industry. Specific operational guidelines would be useful about the amendments contained in the Bill, including matters such as:

- how financial resources to undertake estimated rehabilitation costs will be assessed
- whether the technical and financial resources of all holders will be taken into account where a change of control involves multiple entities
- clarification about whether the existing notification under the *Mineral and Energy Resources (Financial Provisioning) Act 2018* following an change of control event will also be used by the Financial Provisioning Scheme Manager to notify the Minister and whether there will be additional obligations on resource authority holders
- the types of conditions that may be imposed as a result of the Minister's assessment when there is a change of control
- the process that resource companies negotiating an indirect change of control should follow to apply for an 'indicative changed holder review allocation' under the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to obtain an indicative assessment of the risk category that the Financial Provisioning Scheme Manager would allocate to the controlling entity should the indirect change of control occur
- likely timeframes for assessment processes to occur following a change of control
- advice about protection of information provided for assessments.

[270] Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 41.

[271] Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 41.

[272] Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 41.

Recommendation 6

The committee recommends that guidelines for the operation of processes to assess an entity's financial and technical ability to comply with conditions of a resource authority when there is a change of control be published by the Department of Natural Resources, Mines and Energy on commencement of these provisions in the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*.

2.6.2 Remediation of abandoned mines

Clause 147 inserts new provisions in the *Mineral Resources Act 1989* concerning the remediation of abandoned mine sites and rehabilitation of mine sites. The Bill expands the definition of 'remediation activity'[273] to clarify what is meant by the term and to encompass additional activities, including 'maintaining a mine shaft, underground mine feature or equipment on an abandoned mine site or affected land related to previous mining activities' (proposed new s 344A(1)(e))[274] and 'assessing the commercial or practical feasibility of an abandoned mine site for the future exploration and mining of minerals or another use' (proposed new s 344A(1)(k)).[275] The explanatory notes state:

> *The new power in subparagraph (1)(k) allows for the assessment of a site for the purpose of re-commercialisation under the Mineral Resources Act 1989 as a remediation activity. This will enable authorised persons to assess if there are commercial quantities of residual resources remaining, the area could be released under the new mining lease tendering provisions provided for in this Bill. An authorised person may also appraise the site for an alternative managed land use such as a park, renewable energy generation or water resource.*

Clause 147 also introduces a process to allow authorised persons to enter land outside a resource tenure site, with the consent of owners and occupiers, to undertake remediation on this 'affected land'.[276] The explanatory notes state:

> *The chief executive must be satisfied that:*
>
> - *Remediation activities on the affected land are, or may be required, because of the direct or indirect impacts of previous mining activities on the abandoned mine site; and*
> - *The entry is necessary to carry out remediation activities on an abandoned mine site.*[277]

Similar provisions in cls 200 to 202 of the Bill align, where appropriate, the provisions of the P&G Act with the provisions of the *Mineral Resources Act 1989* authorising remediation activities and the process to undertake remediation on 'affected land'.[278]

All submitters commenting on the Bill's provisions related to remediation of abandoned mine sites and rehabilitation of mine sites supported the amendments.[279] WWF-Australia submitted that remediation and rehabilitation would be improved by additional requirements to ensure historic and cultural values of abandoned mines are preserved where practicable, rehabilitated mine sites are safe for birds and

273 Bill, cl 147, new s 344A.

274 Bill, cl 147, new s 344A(1)(e).

275 Bill, cl 147, new s 344A(1)(k).

276 Bill, cl 147, new ss 344E-344I.

277 Explanatory notes, p 75.

278 Explanatory notes, pp 98-100.

279 WWF-Australia, submission 49, p 3; Environmental Defenders Office, submission 53, p 3; Queensland Resources Council, submission 54, p 36; Electrical Trade Union of Employees Queensland, submission 73, p 1.

other wildlife, and sufficient funding is provided for remediation.[280] The EDO also suggested that the provisions specifically refer to protection of native species and habitats, and recommended 'placing an obligation on Government to manage abandoned mines that pose risks to community or the environment' and establishing a unit within DNRME, guided by 'a stakeholder advisory committee', to address rehabilitation of abandoned mines.[281]

DNRME advised that it considered that the expanded definition of remediation activity in proposed new s 344A of the *Mineral Resources Act 1989* 'is sufficiently broad to capture' the additional environmental concerns highlighted by WWF-Australia and EDO.[282] With respect to funding for remediation of sites, the department noted that as the Financial Provisioning Scheme fund established by *Mineral and Energy Resources (Financial Provisioning) Act 2018* matures, 'further resources for abandoned mines will be become available'.[283] In relation to DNRME's activities to support rehabilitation of abandoned mines, the department advised that 'a range of administrative measures to improve transparency and accountability are currently being developed and implemented. Consultation on these measures has and will continue to occur with stakeholders'.[284]

2.6.3 Development plans

Coal and oil shale mining lease holders and petroleum lease holders are required to submit and comply with development plans. The Bill introduces a requirement for large mining lease holders, who mine prescribed minerals above a prescribed threshold, to prepare and comply with development plans which describe the extent, nature, location and timing of mining activities.

The Bill inserts a new chapter 6, part 1A in the *Mineral Resources Act 1989* for development plan requirements for prescribed mineral mining leases. The Bill also amends the Mineral Resources Regulation 2013 to insert Schedule 2A which lists the prescribed minerals and prescribed thresholds for them.[285] DNRME advised that the amendments 'are not intended to override the prescribed minerals definition in Schedule 6 of the Mineral Resources Regulation 2013'[286] and that cobalt and nickel have not been included in the proposed Schedule 2A 'as there are currently no significant operations producing these minerals in Queensland'.[287]

The amendments concerning development plans are intended to also provide information to the state about large sites that are, or may become, in care and maintenance (i.e. when production is ceased for six months or more).[288] Lease holders will be required to amend development plans to reflect the changed activities.

WWF-Australia and EDO supported requirements for proponents of prescribed mineral mines to prepare development plans and made a number of suggestions regarding development plans including setting time limits for mining operations to be in care and maintenance; establishing eligibility criteria for mines to enter into care and maintenance; development plans to include an assessment and

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280 Submission 49, p 3.

281 Submission 53, pp 3-4.

282 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 44.

283 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 44.

284 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 44.

285 Prescribed minerals, as currently defined in Schedule 6 of the Mineral Resources Regulation 2013, are cobalt, copper, gold, lead, nickel, silver, zinc. The Bill (cl 155) inserts a new 'Schedule 2A Prescribed minerals and prescribed thresholds' which lists bauxite, clays, copper, diatomite, dimension stone, gold, gypsum, lead, limestone, magnesium rich materials, phosphate rock, silica, silver, tin, titanium minerals, zinc, zircon as prescribed minerals.

286 Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 16.

287 Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 16.

288 Explanatory notes, p 7.

management of potential risks associated with the mining operations; and managing risks when mines are in care and maintenance.[289]

Mr Nigel Parratt of WWF-Australia noted:

> *Currently there is a whole range of potential economic and environmental risks when mines go into care and maintenance. … Time limits should be set on the amount of time a mine is in care and maintenance mode.*[290]
>
> *…*
>
> *Rather than having a mine open for extended periods of time because the market is potentially going to improve for that commodity at some point in time, and during that period there are environmental impacts occurring to the surrounding environment and neighbouring property owners—and there is ample evidence and examples of that around the state—it is about saying you can stay in this phase, if you like, for this period of time. What that period of time is I suppose would have to be negotiated with the company. Once you have exceeded that time then have you to make a decision, and the decision point would be to either re-open the mine, maybe to sell it to somebody else or rehabilitate it.*[291]

In response to these recommendations, DNRME advised that:

> *Under the Bill, all mineral mines subject to the development plan requirements will be required to update their development plan should they enter care and maintenance. This is in line with current requirements for coal and petroleum production leases. The department will assess whether the activities and timeframes proposed in the development plan are appropriate with regards to activities on site. It is important to note that development plans form part of a whole-of-government framework that includes:*
>
> - *a requirement under the Mineral and Energy Resources (Financial Provisioning) Act 2018 to notify the Financial Provisioning Scheme Manager if a resource authority holder ceases production and does not expect to restart production within six months after the cessation;*
> - *compliance with Progressive Rehabilitation and Closure Plan (PRCP) and environmental authority conditions under the Environmental Protection Act 1994, which the Department of Environment and Science administers.*[292]

DNRME noted that the requirement to lodge a later development plan allows for consideration of care and maintenance of individual mining sites on a case-by-case basis:

> *If a site ceases production, the later development plan application must include the reasons for the cessation of production and detail proposed future activities for the tenure. In deciding whether to approve a later development plan due to a site entering care and maintenance, the Minister must assess whether the cessation is reasonable and whether all reasonable steps to prevent the cessation has been taken. This provides the Minister with discretion to consider whether the care and maintenance is appropriate. The department will develop operational guidance to clearly outline expectations.*[293]

AMEC objected to the proposed requirement that all mining leases meeting certain production thresholds be required to have a development plan in place as 'excessive, costly and unnecessary',[294]

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289 WWF-Australia, submission 49, p 2; Environmental Defenders Office, submission 53, p 3.

290 Public hearing transcript, Brisbane, 3 March 2020, p 21.

291 Public hearing transcript, Brisbane, 3 March 2020, p 23.

292 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 42.

293 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 43.

294 Submission 66, p 2.

contending that the intent of the regulatory reform could be achieved by implementing better information sharing between departments since the information to be included in the development plan for the mining lease will be contained in the plan of operations or progressive closure and rehabilitation plan (PRCP) submitted by the proponent to the Department of Environment and Sciences in accordance with the applicable environmental authority.[295]

In response to AMEC's concern, DNRME stated:

> *Development plans are different to PRCPs and are required for different purposes. The purpose of a PRCP is to plan for final rehabilitation outcomes, including maximising progressive rehabilitation of the land. This is fundamentally different to the purpose of a development plan, which is to outline the nature, extent and timing of resource activities (rather than rehabilitation required following those activities). This includes the rate and amount of the proposed mining and allows for an assessment of the appropriateness of proposed development activities on tenure.*[296]

AMEC also submitted that 'the thresholds proposed for mineral projects should be adjusted or the measure altered altogether' as production thresholds can vary significantly over time.[297]

DNRME explained that:

> *… It is important that once a mineral mine reaches the prescribed threshold, they continue to be subject to the development plan requirement, even if they do not mine above the threshold in subsequent years. This is because a key aspect of the amendment is that requiring development plans from these mines will enable the State to have better information regarding sites that may become, or are, in care and maintenance.*[298]

In relation to the Bill's provisions requiring lease holders who mine prescribed minerals to prepare and comply with development plans, QRC recommended that DNRME undertake further consultation with industry on reporting thresholds for mineral mining operations to submit development plans.[299]

DNRME advised that the thresholds included in the Bill were intended to capture significant mineral mining operations and that as the thresholds will be prescribed by regulation, they may be changed 'if there is evidence that they are not appropriate or require revision'.[300]

2.6.4 Disqualification criteria

The Bill inserts a new chapter 7 'Disqualification of applicants' into the *Mineral and Energy (Resources Common) Provisions Act 2014.*[301] The amendments introduce disqualification criteria to be used in the state's assessment of tenure applications for a resource authority in relation to an applicant's ability to adequately manage the tenure and remain compliant with tenure obligations.[302] Matters which may be considered a disqualification decision are listed in proposed new s 196C(2). The disqualification criteria would allow the Minister to disqualify grant applicants or transferees having a history of:

- *Contraventions against prescribed legislation;*

295 Submission 66, p 2.

296 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 44.

297 Submission 66, p 2.

298 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 42.

299 Submission 54, p 12.

300 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 43.

301 Bill, cl 79.

302 Explanatory notes, p 3.

- *Convictions against prescribed legislation, or within the preceding 10 years, been convicted of an offence involving fraud or dishonesty; and*
- *Insolvency.*[303]

The explanatory notes state that 'the process will help mitigate the potential risk that the site may be disclaimed or left with other outstanding debts through an upfront assessment of the applicant's suitability to hold a resource authority'.[304]

The disqualification criteria would apply to applicants and associates of resource authority applicants, including company directors and parent companies, as well as entities 'in a position to control or substantially influence' the operations of those holding a tenure.[305] The disqualification criteria would not apply retrospectively and will only apply to new resource authority applicants and transfers made following the commencement of the relevant provisions.[306]

Clause 79, proposed new s 196C(3) allows for the decision-maker to disregard a contravention or conviction for an offence having taken into account a range of mitigating factors, including 'any other relevant matter the decision-maker considers relevant' to making the decision.

Submitters recommended clarification of the disqualification provisions in the Bill in the following ways:

- no provisions clearly describe the purpose of the disqualification power or the basis on which an applicant is liable to be disqualified, so that considerations of 'any other matter the decision maker considers relevant' or 'degree of seriousness' or 'degree of harm' in the assessment of applicants can only be subjective. QLS submitted that a provision that identifies when the power to disqualify is able to be exercised should be included in the Bill.[307] QRC suggested that the legislation and policy should outline a threshold for seriousness of a breach/contravention in order for it to be considered a disqualifying factor[308]
- redraft proposed new s 196C(2) to ensure it is appropriately constrained and does not have unintended consequences;[309] redraft proposed s 196C(3) to ensure the Minister must consider mitigating factors, as the use of the word 'may', allowing for the discretion of the Minister about whether to disregard a contravention or offence, is concerning[310]
- the Minister's discretion to decide whether to disqualify an operator from applying for or obtaining an authority should be limited[311]
- 'associate' is defined subjectively in new s 196A. QLS recommended that there be a more objective test for determining whether an entity 'controls' an applicant.[312] Similarly, QRC submitted that the definition of associate is very broad and queried whether there might be a threshold requirement to prove an entity has 'control or substantial influence' over the applicant.[313] WWF-Australia suggested the definitions in proposed new s 196A be amended to

303 Explanatory notes, p 4; see Bill, cl 79.

304 Explanatory notes, p 13.

305 Bill, cl 79.

306 Explanatory notes, p 13.

307 Submission 32, pp 6-7.

308 Submission 54, p 34.

309 Submission 54, p 32.

310 Queensland Resources Council, submission 54, p 33.

311 Submission 53, p 5.

312 Submission 32, p 7.

313 Submission 54, p 31.

include Joint Venture partnerships as 'associates' given their predominance in coal mining projects in Queensland[314]

- a provision confirming whether a disqualified applicant can re-apply for the grant or transfer of an resource authority after a disqualification decision has been made needs to be included[315]
- supporting material, such as operational policies and explanatory notes, should be developed to provide clear information about the application and use of the new disqualification criteria and powers.[316]

In response to the matters raised by submitters, DNRME provided the following comments.

Exercising the power to disqualify

> *The main purpose of the* Mineral and Energy Resources (Common Provisions) Act 2014 *has been amended to include an additional purpose for the Act – that is, the disqualification of persons from the grant or transfer of particular resource authorities. The explanatory notes also provide guidance as to the purpose of the amendments.*[317]
>
> *…*
>
> *The power to disqualify an applicant will only be used where the disqualification criteria are met and the matters are of a serious nature. The criteria listed in section 196C(2) provide an extensive list of matters which are relevant to the consideration of whether an applicant should be disqualified. To enliven the disqualification criteria, the disqualifying matter will need to be at least one of the matters included in section 196C(2) and of a serious nature.*[318]
>
> *…*
>
> *While a legislative threshold is not proposed, guidance material will be developed to assist stakeholders. This will provide clarity to stakeholders about the types of conduct which may trigger the application of the disqualification criteria.*[319]

Minister's consideration of mitigating factors

> *The decision-maker is given the flexibility to determine the appropriate weight that should be accorded to each of these matters by relying on subsection (2)(i) which says the decision-maker may take into account "any other relevant matter" the decision-maker considers relevant to making the decision. This will allow the decision-maker to consider the seriousness of each matter on a case-by-case basis, depending on the specific circumstances of each applicant.*
>
> *… The explanatory notes to clause 79 make it clear that the policy intent is to capture continual or repeated breaches of existing tenure obligations or serious offences. The explanatory notes expressly state that single instances of non-compliance will generally not result in an applicant being disqualified.*[320]

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314 Submission 49, p 1.

315 Queensland Law Society, submission 32, p 7.

316 Queensland Resources Council, submission 54, p 32.

317 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 44.

318 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 45.

319 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 47.

320 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 46.

…As the decision-maker must provide a notice of intended disqualification to the applicant, this will provide the applicant with an opportunity to raise mitigating factors through a submission which the decision-maker will take into account in making their final decision.[321]

Limiting discretion to disqualify

Discretion is appropriate due to the range of factors that may be relevant to the decision. This is important given that the criteria will be considered on a case-by-case basis, depending on the specific circumstances of each applicant.[322]

Definition of 'associate'

As with the disqualification criteria themselves, the definition of associate is intentionally structured to provide the decision-maker with broad discretion to determine whether the entity is in a position to influence the applicant's affairs in relation to the prescribed matter. The terminology used is therefore intended to capture more than just corporations and is similar to the wording in existing section 137 of the Mineral Resources Act 1989*. This is considered appropriate as there may be a circumstance where a tenure is held by a person, but effectively that tenure is controlled by another (e.g. a familial connection).*[323]

…

The disqualification provisions will capture any joint venture partners who are named as applicants on a resource authority application. The provisions may also capture other joint venture partners, who are not named as applicants, if they are considered to be "associates" of the applicant. An "associate" is defined in section 196A of the MERCP Act as an entity that is in a position to control or substantially influence the applicant's affairs in connection with the relevant resource authority. This could extend to joint venture partners, if they have the ability to control or influence the operations of the partners who hold the tenure.[324]

Re-application by a disqualified applicant

There is nothing in the Bill to prevent an applicant that has been disqualified on a particular application from reapplying, however if circumstances have not changed, the outcome is likely to be the same.

Supporting material for the application and use of the new disqualification criteria

Supporting material, including operational guidance material, will be developed to assist stakeholders.[325]

Committee comment

In relation to the Bill's provisions introducing disqualification criteria to be used in the state's assessment of applicants, transferees, and associates of applicants and transferees of resource authorities prior to the grant or transfer of a resource authority, the committee notes submitters' requests for greater clarity about how the disqualification process will work. Information such as the types of conduct likely to result in disqualification, the intention to capture matters of a serious nature, and guidance about application of the criteria in determining whether an entity is in a position to control a tenure holder would be instructive. The committee supports the development of operational

321 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 46.

322 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 46.

323 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 45.

324 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, pp 45-46.

325 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 47.

guidelines and supporting material to assist applicants in understanding the new regulatory requirements.

Recommendation 7

The committee recommends that operational guidelines for the application of disqualification criteria in the assessment of tenure applications for a resource authority be published by the Department of Natural Resources, Mines and Energy on commencement of these provisions in the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*.

2.6.5 Tender process for mining lease

Clause 142 of the Bill inserts new part 1B into chapter 6 of the *Mineral Resources Act 1989* to provide for a competitive tender process for mining leases. The process would allow the Minister to release an area of land for tenure and appoint a preferred tenderer who has the sole right to apply for a mining lease over that area of land.[326] The explanatory notes state that the provisions are 'to support the ability to repurpose abandoned mine sites'[327] in order to re-commercialise sites where mineral resources remain.

The proposed process may be used for sites other than abandoned mines.[328] The explanatory notes state that existing requirements in relation to mining lease applications such as native title matters, objections, and the need for an environmental authority will not be affected by the proposed amendments.[329]

AMEC submitted that it supports the intent of these provisions but is concerned that the Bill would allow the Minister to invite tenders for an application for a mining lease over an area where an explorer currently holds an exploration permit.[330] AMEC stated:

> *The amendments proposed in MEROLA Bill will allow the Minister to essentially override that explorers priority and grant a mining lease to a third party. As such, it is our view that either this competitive tender process should only apply to areas where there is no mining tenement or, the process is amended to essentially allow the holder of any exploration permit over the area to have a first right to apply for a mining lease over the proposed tender area.*[331]

DNRME advised that cl 142 of the Bill would address AMEC's concern, confirming that:

> *… new section 317Z(5) provides that the Minister must not act under the section if all or any part of the land is subject to a mining tenement or an application for a mining tenement (other than a prospecting permit or application for prospecting permit). This provision therefore ensures that the Minister cannot release an area for a mining lease tender if it is already subject to an existing mining tenement.*[332]

The QRC supported the amendments, although noting a complication in relation to applying the process to a coal mining lease:

> *In the event the process is used for a coal mining lease, QRC suggests careful consideration be given prior to the release for tender. QRC would expect an assessment of overlapping gas tenure*

326 Explanatory notes, p 15.

327 Explanatory notes, p 7.

328 Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 6.

329 Explanatory notes, p 7.

330 Submission 66, p 3.

331 Submission 66, p 3.

332 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 47.

be undertaken given the overlapping tenure framework in MERCPA outlines a 10 year notice period to an overlapping gas party that could trigger significant compensation if mining commences within that 10 year notice period.[333]

DNRME noted QRC's suggestion about the need to conduct an assessment of overlapping gas tenures prior to release of tender.[334]

The QRC also suggested that it would be beneficial for the *Mineral Resources Act 1989* to provide for a facility where a holder of a mining lease could apply for the grant of a mineral development licence for the same mineral over the same part or area, since 'recommencement of mining might involve new mining, metallurgical, resource, infrastructure and feasibility studies'.[335]

DNRME advised that it considers that the ability to revert to, or apply for, a mineral development licence while holding a mining lease would be inconsistent with the objectives of the *Mineral Resources Act 1989,* i.e. to expedite and regulate the exploration for, and mining of, minerals.[336]

2.6.6 Excluded land

The Bill includes amendments to provide an explicit power for the Minister to declare that certain land is 'excluded land' at the time of granting an exploration permit or mineral development licence under the *Mineral Resources Act 1989.*[337] The amendments align the excluded land powers under the *Mineral Resources Act 1989* with the excluded land powers in the P&G Act.

With respect to 'excluded land', WWF-Australia submitted that the powers enabling the Minister to exclude mining activities should be broadened to enable the Minister to exclude mining on other significant land such as:

- priority Agricultural Areas, Priority Living Areas and Strategic Environmental Areas under the *Regional Planning Interest Act 2014*
- groundwater recharge areas
- high value ecological and conservation areas
- essential habitat and biodiversity corridors
- land of indigenous cultural value.[338]

Mr Parratt from WWF-Australia explained:

… the only area of Queensland that is completely sterilised from mining is national parks. The way it works is that if a mine wants to go into an area with high agricultural values, under the Regional Planning Interests Act they just have to seek a regional interest development approval. All they have to demonstrate is that they are not going to be causing widespread impacts to values. Feasibly, they could, say, allow one mine into an area. It might not allow two or three mines to go ahead, but it does not completely sterilise that priority agricultural area from a resource development project.[339]

…

333 Submission 54, p 36.

334 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 47.

335 Submission 54, p 37.

336 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 47.

337 Bill, cls 116, 121.

338 Submission 49, p 3.

339 Public hearing transcript, Brisbane, 3 March 2020, p 22.

> *… if these powers were expanded to enable the minister to exclude mining from other areas it would provide a high degree of certainty and confidence for other industries that the land that they need and that they rely on will be there for evermore.*[340]

In response to this proposal, DNRME stated that the provisions 'are not intended to materially change the way excluded land is currently used in Queensland' and that the other significant land identified by WWF-Australia is 'already protected under a range of different legislation, including the *Regional Planning Interests Act 2014*. Extending the excluded land provisions to these types of area would create ambiguity and regulatory duplication'.[341]

2.7 Regulatory efficiency

The explanatory notes state that several proposed amendments in the Bill are aimed at improving the efficiency and effectiveness of resource regulatory processes.[342]

2.7.1 Dispute resolution framework for overlapping tenure applications or activities

The Bill proposes amendments that create a process to resolve commercial disputes where certain mining lease applicants, petroleum pipeline licence holders or petroleum facility licence holders cannot secure the agreement of the pre-existing tenure holders.[343]

The department advised that the Resource Acts often require a pre-existing tenure holder to give consent to overlapping applications or authorised activities. This provides the opportunity for parties to come to a commercial agreement for coexistence. However, there is no obligation for the pre-existing tenure holder to give consent, and there is no provision to force a resolution.[344]

> *The Bill establishes an administrative process that provides the Minister with a new administrative power to grant a specific purpose mining lease or a transportation mining lease when the underlying tenure holder does not provide consent. This power may only be exercised if the Minister is satisfied that activities for the proposed tenure can be carried out in a way that is compatible with the activities of the existing tenure, and that the co-existence of the two tenures would optimise the development and use of the State's resources to maximise the benefit for all Queenslanders.*[345]

The QRC supported these amendments.[346]

The QLS submitted that the provisions would allow broad discretion by the Minister to grant the overlapping tenure but that:

> *There is nothing that requires the Minister to either be satisfied that any financial/commercial impact is minimal or will be compensated. Similarly, an arbitrator (where the co-existence plan cannot be agreed within three months) is not required to include, or even consider, compensation within any determination of a co-existence plan. This is despite compensation being mandated as an item that must be stated in the co-existence plan as being payable or not pursuant to subsection 271AB(7)(e).*[347]

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340 Public hearing transcript, Brisbane, 3 March 2020, p 21.

341 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 48.

342 Explanatory notes, pp 1, 8.

343 Bill, cls 74-78, 128, 131, 140, 192 and 195; explanatory notes, p 8; Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 7.

344 Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 7.

345 Explanatory notes, p 16.

346 Submission 54, p 38 .

347 Submission 32, p 8.

The QLS suggested that a clear statement regarding the considerations that would apply to the exercise of the Minister's discretion should be included in the Bill and that proposed s 271AB(2) include a requirement that the Minister consider technical and feasibility impacts on tenure holders.[348] QLS further submitted that the Bill be amended to require compensation to be considered by the arbitrator when considering a co-existence plan resulting from the grant of an overlapping tender.[349]

In response to these concerns, DNRME advised:

> *The Minister must be satisfied that the authorised activities can be carried out in a way which is compatible with the authorised activities of the existing authority, and that the Minister must be satisfied that the co-existence would maximize the benefit for all Queenslanders.*
>
> *The agreed co-existence plan must state whether any monetary or non-monetary compensation is to be given under the plan. If parties are in dispute over whether monetary or non-monetary compensation is to be given under the plan, this will be a subject of the arbitration.*[350]

Although supportive of the proposed process, AMEC raised concerns regarding the practicality of the process for deciding the mining lease application provided in s 271AB. AMEC suggested that any process to agree on a coexistence plan should be dealt with prior to the grant of the mining lease application by the Minister so that the applicant for the later mining lease is aware of any restrictions on its operations.[351]

In response to this suggestion DNRME advised:

> *The intent of the framework is to provide a path to an arbitrated solution to particular commercial disputes where the parties cannot reach an agreement about how the two projects will coexist. The department also notes that the framework does not stop the parties from reaching an agreement outside the arbitration framework.*[352]

2.7.2 Consolidating concerns conferences provisions

The Bill proposes to consolidate concerns conferences into one framework under the *Mineral and Energy Resources (Common Provisions) Act 2014*.[353]

Currently, the *Geothermal Energy Act 2010, Greenhouse Gas Storage Act 2009, Mineral Resources Act 1989, Petroleum Act 1923* and P&G Act contain identical conferencing provisions. The conferences for the negotiation of a conduct and compensation agreement (CCA) will be removed from these Acts, as there is an existing and largely duplicative framework about CCAs under the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Clause 92 describes the requirements for conducting a conference to discuss a concern relating to a resource authority, including that a party must not be represented by a lawyer at the conference unless each of the other parties attending the conference agrees, and the authorised officer is satisfied that there will be no disadvantage to each other party. The QLS submitted that parties should be entitled to legal representation at concerns conferences.[354] In response, DNRME advised that the Bill's provision that legal representation would be permitted only if the parties jointly agree and the

348 Submission 32, p 8.

349 Submission 32, p 8.

350 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 48.

351 Submission 66, p 4.

352 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 48.

353 Bill, cl 68.

354 Submission 32, p 8.

authorised officer is satisfied there is no disadvantage 'maintains existing status quo under the Resource Acts'.[355]

2.7.3 Creating notifiable dealings in *Mineral and Energy Resources (Common Provisions) Act 2014*

Non-assessable transfers occur due to the operation of law, for example, a transfer because of a death or bankruptcy.[356] Currently, the *Mineral and Energy Resources (Common Provisions) Act 2014* requires the Minister to assess and approve whether these transfers should be registered by the chief executive. The Bill proposes that non-assessable transfers will no longer require the Minister's approval before they are registered. The Bill retains the requirement that transfers cannot be registered if there are royalties or contributions to the Financial Provisioning Scheme outstanding.[357]

2.7.4 Counting petroleum lease areas towards relinquishment requirements

The Bill inserts new ss 66A and 66B in the P&G Act to allow exploration tenures (authority to prospect) progressed to higher tenure (petroleum lease) to count towards relinquishment requirements, and applications for higher tenure to proportionately defer relinquishment requirements until a decision has been made on the application.[358] The provisions will provide consistency in relinquishment requirements across petroleum, coal and mineral exploration tenures.

The QRC strongly supported these amendments, requesting that DNRME provide guidance on the process for relinquishment where an application is unsuccessful or withdrawn.[359] DNRME advised that 'clear guidance documentation' regarding the amendments would be developed.[360]

Committee comment

The committee notes industry's request for guidelines regarding amendments to allow counting petroleum lease areas to count towards relinquishment requirements, particularly with respect to the process for relinquishment where an application is unsuccessful or withdrawn. The committee encourages the preparation of operational guidelines about these amendments.

Recommendation 8

The committee recommends that operational guidelines for the amendments to allow petroleum lease areas to count towards relinquishment requirements be published by the Department of Natural Resources, Mines and Energy on commencement of these provisions in the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*.

2.8 Other amendments to Acts and Regulations within the Natural Resources, Mines and Energy portfolio

The Bill includes provisions intended to streamline and improve the operations of several Acts and Regulations within the Natural Resources, Mines and Energy portfolio. Submissions were received on some of the provisions and are discussed in the sections below. Other amendments include:

- allowing a regulation-making power to enable the Minister to prescribe new categories of Energy and Water Ombudsman scheme participant and associated participant fees[361]

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355 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 48.

356 Explanatory notes, p 8.

357 Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 7.

358 Bill cl 178-180; Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 8; Queensland Resources Council, submission 54, p 38.

359 Submission 54, p 38.

360 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 49.

361 Bill, cls 18-28.

- removing the time limitation on the existing ban on certain fees and charges for customers on standard retail electricity contracts[362]
- correcting minor errors, cross-references and updating or removing obsolete terms in various Acts.

2.8.1 Water storage infrastructure operations

The Bill makes amendments to remove ambiguity about water releases to temporarily reduce water levels in dams for safety purposes when flooding occurs.[363] The provisions are to clarify that the actions water storage infrastructure operators, e.g. Seqwater and Sunwater, can take to reduce storage capacity in accordance with an approved Flood Mitigation Manual or to meet a dam safety requirement under the *Water Supply (Safety and Reliability) Act 2008* are separate to obligations stated in the resource operations licence under the *Water Act 2000.*[364] Mr David Wiskar, Executive Director, Water Policy, Policy Division, DNRME explained:

> *All this amendment does is make those two pieces of legislation talk to each other as they are intended. Effectively, what it says is that, from time to time, a decision is made to create a temporary full supply level. Generally that is a requirement that has occurred because of a dam safety activity. … they then have another instrument under the Water Act called their resource operations licence. It refers to the full supply level of the dam in that instrument, rather than the temporary full supply level. … When the full supply level has been reduced, it automatically transposes into the other document that that becomes the intended full supply level until this changes again*.[365]

WWF-Australia supported these amendments.[366]

2.8.2 Water distributor-retailer infrastructure charges

The Bill includes provisions to require greater transparency about infrastructure charges levied and collected by the south east Queensland water distributor-retailers (Urban Utilities and Unitywater), and about how the money collected is invested in infrastructure.[367]

The concerns of Unitywater and Urban Utilities with some provisions are summarised below.

2.8.2.1 Electronic searchability

Clause 211 would require the distributor-retailers to publish their infrastructure charges register on their website in a way that can be electronically searched. Unitywater was concerned that the term 'electronically searched' be defined in the Bill to provide certainty about the appropriate format.[368]

DNMRE advised that it was intentional that the Bill 'leaves it up to the distributor-retailer on the type of digital file or program they use for the register. However, the file/program used must be able to be digitally searched. The Infrastructure Charges Register could at its simplest be in a PDF format, which can be electronically searched'.[369]

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362 Bill, cls 164, 165.

363 Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 12.

364 Bill, cl 216; explanatory notes, p 105.

365 Public briefing transcript, Brisbane, 17 February 2020, p 7.

366 Submission 49, p 49.

367 Department of Natural Resources, Mines and Energy, correspondence dated 14 February 2020, p 12.

368 Submission 29. p 4.

369 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 49.

Information included Infrastructure charges register

Unitywater submitted that cl 212 which would require information for each infrastructure charge levied to be included on a distributor-retailer's infrastructure charges register 'will result in an unnecessary administrative burden' and duplicate information available elsewhere.[370]

DNRME advised that the requirement for distributor-retailers to make available on their websites all infrastructure charges notices issued was intended to provide the community with more information about how much money is collected and expended by the distributor-retailers, and

> *For the details that are contained in the infrastructure charges notice (e.g. date of the notice, reference number, amount of the charge etc.) a link to the relevant infrastructure charges notice will meet the requirements of 99BU(1) and ensure there is not a duplication of information.*[371]

DNRME also noted that the requirements for the availability of information from the distributor-retailers is same as the requirements for local governments.[372]

Forecasting infrastructure charges

Urban Utilities supported the amendments in cl 212 except for proposed s 99BU(6) regarding the infrastructure charges forecast to be levied and the trunk infrastructure forecast to be supplied. Urban Utilities requested the forward forecast of infrastructure charges revenue be removed, contending that such estimates are inherently volatile, and as revenues typically lag infrastructure investment 'the information provides little value to customers and the wider community'.[373]

Unitywater was concerned about the accuracy of forecasting infrastructure charges it expects to receive, as factors such as the timing of development and payment of infrastructure charges are outside the control of distributor-retailers. Unitywater considered that 'a forecast of infrastructure charges has no useful purpose as infrastructure charges payments will always lag infrastructure by years'.[374] Unitywater suggested that proposed s 99BU(6) be removed from the Bill, or that it be modified to require the distributor-retailers to forecast 'infrastructure charges payments' rather than infrastructure charges to be levied, as not all infrastructure charges that are levied will be collected.[375]

DNRME advised that the department considers it reasonable to change the requirement of forecast infrastructure charges from 'levied' to 'collected'.[376]

DNMRE also advised that the requirements for the availability of information, including forecasting of infrastructure charges revenue, is the same as the requirements for local governments and that this ensures there is consistent approach to the disclosure of information.[377]

Definition of 'locality'

Clause 212, proposed new s 99BU(1)(d), requires a distributor-retailer's infrastructure charges register to include information about 'the suburb or other locality' in which the land to which each charge applies is situated. Unitywater submitted that the term 'locality' be defined in the Bill to mean 'a

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370 Submission 29. pp 4-5.

371 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 49.

372 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 49.

373 Submission 65, p 4.

374 Submission 29, p 5.

375 Submission 29, p 6.

376 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 50.

377 Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 50.

geographic area that can be a local government area or a sewerage service catchment or a water supply scheme area'.[378]

DNRME advised that 'the Explanatory Notes provide an example that locality for a piece of infrastructure could include local government area' and that the department 'does not consider it necessary to further specifically define locality'.[379]

Committee comment

The committee notes the advice of DNRME in regard to the matters raised by submitters about the Bill's provisions which are intended to streamline and improve the operations of some legislation within the Natural Resources, Mines and Energy portfolio. The committee also notes the department's support for a change to cl 212, s 99BU(6), to require that information about infrastructure charges forecast to be 'collected' rather than 'levied' be included in the distributor-retailer's infrastructure charges register.

Recommendation 9

The committee recommends that clause 212 of the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 be amended so that proposed new section 99BU(6) will require that information about infrastructure charges forecast to be 'collected' be included in the distributor-retailer's infrastructure charges register.

2.8.3 Amendments to the *New South Wales-Queensland Border Rivers Act 1946*

The Bill contains provisions authorising the department administering the *Water Act 2000* as the controlling authority under the *New South Wales-Queensland Border Rivers Act 1946* and the Border Rivers Agreement.[380]

WWF-Australia supported the amendments to the *New South Wales-Queensland Border Rivers Act 1946.* WWF-Australia also suggested a review of the purpose of the *Border Rivers Act 1946,* and the alignment of the *Border Rivers Act 1946* with the *Water Act 2000* and the Murray Darling Basin Plan.

DNMRE noted the suggestion for a review of the function of *the New South Wales-Queensland Border Rivers Act 1946* and associated arrangements, advising that the Bill's provisions were to improve clarity of arrangements and any review and reform would need to occur at another time.[381]

[378] Submission 29, pp 6-7.

[379] Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 50.

[380] Bill, cl 167.

[381] Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 51.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* 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
- the institution of Parliament.

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

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 Right to privacy regarding personal information

Clause 33 amends the regulation-making power in s 135 of the Explosives Act to provide for the keeping of a register of authorities and security clearances, and the disclosure and publication of information in the register. The clause raises an issue of fundamental legislative principle relating to the rights and liberties of individuals, particularly regarding an individual's right to privacy with respect to their personal information.

The right to privacy, and the disclosure of private or confidential information, are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.

Personal information that could potentially be published may be a person's name, and the number and status of their authority or security clearance number. The disclosure and publication of a person's information could breach their privacy and therefore their rights and liberties as an individual.

The explanatory notes state:

> *… the potential encroachment on a person's right to privacy in this context is considered justifiable on the basis that it is a necessary consequence of providing a way for the explosives industry to verify whether a person holds a valid authority or security clearance. This recognises the potential risk to public safety that could result from the misuse of explosives. Further, providing for an online register also aligns with other* [licensing] *regimes, which also feature an online register for checking licence status.*[382]

Committee comment

Given the policy aim of enhancing public safety, the committee is satisfied that any breach of an individual's privacy is justified.

3.1.1.2 Proportionality and relevance of offences – industrial manslaughter provisions

Clauses 11, 30, 157 and 203 respectively introduce industrial manslaughter as an offence in the:

- CMSHA, new ss 48A to 48D
- MQSHA, new ss 45A to 45D
- Explosives Act, new ss 54A to 54D
- P&G Act, new ss 799I to 799L.

[382] Explanatory notes, p 12.

This offence will apply to an employer or senior officer where:

(a) a worker dies in the course of carrying out work or is injured in the course of carrying out work at the place of employment and later dies

(b) the employer or senior officer's conduct causes the death of the worker, and

(c) the employer or senior officer is negligent about causing the death of the worker.[383]

The maximum penalty for an individual is 20 years imprisonment and for a body corporate 100,000 penalty units. Further, in each instance, the operation of s 23 of the Criminal Code is excluded.[384]

The need for the offence of industrial manslaughter has been questioned. The QLS did not support the introduction of the offence *into the resources safety acts*, on the basis that:

> *There are existing criminal offences in these acts which capture conduct, both acts and omissions that causes a fatality, as well as offences in the Criminal Code which do the same. We say it is imprudent and ineffective for governments to continually draft new offences to cover specific events. The creation of these new offences will not prevent fatalities from occurring, especially where there are existing applicable offences. As we have stated, regulatory bodies need to be sufficiently resourced to engage with and, when necessary, investigate and prosecute operators. We say this can be done within the existing laws. We consider that it is unwise to overcomplicate the statute book with offences that cover the same acts and omissions.*[385]

DNRME explained the intent behind the provisions:

> *The policy intent is to ensure consistency across all work sites and that industrial manslaughter offences are available under the resources acts consistent with the existing industrial manslaughter offence in the* Work Health and Safety Act 2011.[386]

As noted, the Bill explicitly excludes the operation of s 23 of the Criminal Code, which goes to intent. Section 23(1) states:

> *Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for—*
>
> *(a) an act or omission that occurs independently of the exercise of the person's will; or*
>
> *(b) an event that—*
>
> *(i) the person does not intend or foresee as a possible consequence; and*
>
> *(ii) an ordinary person would not reasonably foresee as a possible consequence.*

The QLS strongly criticised the exclusion of s 23:

> *QLS is particularly concerned that an accused will therefore not be able to plead circumstances of accident, involuntariness or acts independent of their will. In the absence of appropriate defence or excuse provisions, these provisions essentially become strict liability offences, which infringe and deny fundamental rights given to those accused of homicide offences which carry an extremely high maximum penalty. It is the Society's view that this infringement of a*

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383 The wording in each offence varies slightly in relation to the worker and place of employment, depending on which Act applies – such as: coal worker and coal mine, plant or gas worker at an operating plant.

384 Proposed s 48B of the *Coal Mining Safety and Health Act 1999*, s 54B of the *Mining and Quarrying Safety and Health Act 1999*, s 45B of the *Explosives Act 1999*, and s 799J of the *Petroleum and Gas (Production and Safety) Act 2004*.

385 Public hearing transcript, Brisbane, 3 March 2020, p 27.

386 Mr Mark Stone, Department of Natural Resources, Mines and Energy, public hearing transcript, Brisbane, 3 March 2020, p 32.

cornerstone principle of our justice system is not justified by the objects and purposes of the legislation. [387]

The explanatory notes do not refer to this issue. In response to the concerns regarding the exclusion of s 23, DNRME advised:

Consistent with the Work Health and Safety Act 2011*, the defence under section 23 of the Criminal Code for 'accident' has been excluded for industrial manslaughter offences. Again, there would need to be proof beyond reasonable doubt that the senior officer's conduct caused the death of the worker and that the senior officer was criminally negligent about causing the death.*[388]

…

So why exclude a section 23 defence found in the Criminal Code? To be clear, the defence under section 23 of the Criminal Code provides that a person cannot be criminally responsible for acts which occur independently of their will. The defence is not available for Criminal Code offences where criminal negligence is an element. For industrial manslaughter, a person cannot be held liable unless it is shown beyond reasonable doubt that their criminally negligent conduct caused the death of the worker. It comes back to the jury and the court looking at the elements of the offence and proving beyond reasonable doubt that the criminal negligence was a factor, otherwise the section 23 defence becomes moot.[389]

Further, as to the elements to be proved, and the standard of proof required:

Industrial manslaughter is a criminal offence, and the standard of proof is the criminal standard required for all criminal offences whether under the Criminal Code or other legislation. Each element of the offence must be proven beyond reasonable doubt in order to convict an individual. The government's policy intent is that criminal negligence is addressed through the provision. This may include recklessness or gross negligence but requires a much higher standard than civil negligence. In this regard, the courts have said there must be a breach of duty that is so gross as to warrant the intervention of the criminal law and criminal punishment.[390]

In short, the position of the department is that, given the offence of industrial manslaughter is based on establishing negligence, s 23 is appropriately excluded. It is noted that the general industrial manslaughter offence provisions also expressly exclude the operation of s 23 of the Criminal Code.[391]

Committee comment

In recognising the extremely serious circumstances of a workplace fatality where the employer or the senior officer has been negligent, the committee considers the creation of the new offences to be justified.

3.1.1.3 Proportionality and relevance – penalties

As noted above, cls 11, 30, 157 and 203 introduce industrial manslaughter offences. The maximum penalty for an individual is 20 years imprisonment. Clauses 4, 5, 6, 7, 8 and 9 provide for a range of obligations based on the core requirement for any SSE or ventilation officer under the CMSHA to be

387 Submission 32, p 2.

388 Mr Mark Stone, Department of Natural Resources, Mines and Energy, public hearing transcript, Brisbane, 3 March 2020, p 32.

389 Mr Mark Stone, Department of Natural Resources, Mines and Energy, public hearing transcript, Brisbane, 3 March 2020, p 33.

390 Mr Mark Stone, Department of Natural Resources, Mines and Energy, public hearing transcript, Brisbane, 3 March 2020, p 32.

391 See *Work Health and Safety Act 2011*, s 34B(3).

an employee of the relevant a coal mine operator. In each case, a breach of the obligation is an offence, with a maximum penalty of 500 penalty units.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

> *In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.*
>
> *… Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*[392]

The creation of new offences affects the rights and liberties of individuals.

Industrial manslaughter

The explanatory notes state:

> *… The offences significantly increase potential penalties for the most serious examples of negligent conduct by an employer or senior officer, which causes the death of a worker. This recognises the extremely serious circumstances of a workplace fatality where the employer or senior officer has been negligent (recklessness or gross negligence) about causing the death.*[393]

Site senior executives and ventilation officers

The explanatory notes provide the following explanation in relation to the offences:

> *These amendments aim to provide employment security for critical safety statutory officer holders so that they feel that they can raise safety issues and make reports about dangerous conditions without fear of reprisal or impact on their employment. This will in turn protect the safety and health of workers more broadly.* [394]
>
> *This recognises the seriousness of this offence. The 12 month transitional period for compliance will provide coal mine operators with time to meet the new requirements.*

The explanatory notes state that the maximum penalty 'recognises the seriousness of this offence' and:

> *The amendments … are justified as they are critical for managing the risks to safety and health of workers.*[395]

Committee comment

The committee considers that, on balance, the significant penalties imposed are justified, given the overall objective of increasing worker health and safety.

3.1.1.4 Ordinary activities not to be unduly restricted

Clause 131 (new s 271AB of the *Mineral Resources Act 1989*) establishes a process that provides the Minister with the power to grant a specific purpose mining lease or a transportation mining lease, even when any underlying tenure holder does not provide consent.

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392 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

393 Explanatory notes, p 10.

394 Explanatory notes, p 11.

395 Explanatory notes, p 11.

By granting a lease where the existing tenure holder does not provide consent, there might be a concern that such a tenure holder's ability to carry out their normal activities could be affected or restricted, and this would affect their rights and liberties.

The explanatory notes provide the following explanation of the power:

> *This power may only be exercised if the Minister is satisfied that activities for the proposed tenure can be carried out in a way that is compatible with the activities of the existing tenure, and that the co-existence of the two tenures would optimise the development and use of the State's resources to maximise the benefit for all Queenslanders.*[396]

Additionally, any application for such a lease would have to include public notification, and any existing tenure holder may make an objection to the application.[397]

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified.

3.1.1.5 Power of entry only with warrant

Clause 147 inserts new provisions in the *Mineral Resources Act 1989*, relating to remediation of abandoned mine sites. The chief executive may authorise a person to enter an abandoned mine site or other affected land to carry out remediation activities.

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.[398]

Under the proposed provisions, an authorised person may enter a person's land for the purposes of carrying out remediation or rehabilitation activities. This would affect the rights and liberties of a land owner whose property is the subject of these activities. The free and unfettered use of a person's land would be affected by these activities.

Such entry may only occur with the consent of the owner and occupier of the property, unless the entry is required to preserve life or property.

The explanatory notes state:

> *Sufficient safeguards are in place to ensure that the rights and liberties of individuals are adequately protected. Entry to land that was originally the site of the resource activity is justified because the intent is to make abandoned sites safe, secure, durable and, where possible, productive.*
>
> *The powers of entry to affected land are limited to where the chief executive is satisfied that the land has been affected by an abandoned mine or that entry is required to undertake remediation activities.*[399]

Committee comment

The committee is satisfied that any breach of fundamental legislative principle here is justified, given the objective of remediating and rehabilitating land and that, in most cases, consent is required to enter the land.

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396 Explanatory notes, p 16.

397 See explanatory notes, p 16.

398 *Legislative Standards Act 1992,* s 4(3)(e).

399 Explanatory notes, p 15.

3.1.1.6 Disqualification criteria for resource authority applicants

Clause 79 establishes disqualification criteria to assess the risk associated with applicants for new resource authorities. The explanatory notes explain that the process will help mitigate the potential risk that the site may be disclaimed or left with other outstanding debts through an upfront assessment of the applicant's suitability to hold a resource authority.[400]

The disqualification criteria include:

- a history of non-compliance with relevant prescribed legislation
- relevant prescribed criminal history
- a history of mismanagement of a company, or
- they are associated with a person who would fail to meet the requirements of the above three parts.

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. A disqualification process could be seen as interfering with these rights and liberties.

The explanatory notes provide the following explanation of the decision-making process:

> *Before an applicant can be disqualified, they must be issued a notice outlining the proposed decision and reasons why the applicant has triggered the disqualification criteria. The applicant has the opportunity to make submissions about the notice and the decision-maker is required to consider the submissions in determining whether the application will proceed or be refused.*[401]

The committee notes that proposed s 196H requires the decision-maker to give the applicant a notice of disqualification and the reasons for the decision. Thus, there is procedural fairness afforded to an applicant. Further, as noted in the explanatory notes, any decision is subject to judicial review.[402]

Committee comment

The committee is satisfied that there has been sufficient regard given to the rights and liberties of the individual, and that the power is subject to appropriate review.

3.1.1.7 Retrospective provisions

Clauses 16, 161, 162 and 206 make amendments to three Acts (the CMSHA, the MQSHA and the P&G Act) to validate cost orders made by an Industrial Magistrates Court prior to December 2014 in relation to a proceeding for an offence against those Acts.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect the rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.[403]

The explanatory notes state:

> *The amendments are justified as they will be beneficial and provide certainty to litigants. Over the past 20 years, costs have been awarded in criminal proceedings in the Industrial Magistrates Court. These costs have been sought by parties to litigation, and ordered by the courts in good faith, on the basis that they were lawfully made. The amendments will benefit parties to a*

400 Explanatory notes, p 13.

401 Explanatory notes, p 14.

402 Explanatory notes, p 14.

403 *Legislative Standards Act 1992*, s 4(3)(g.)

> *proceeding by validating costs orders previously made for proceedings under* [the three Acts] *prior to December 2014.*[404]

The fundamental legislative principle here is concerned with *adverse* effects of any retrospective operation. There is no information as to the beneficiaries of the costs orders, including to what extent such beneficiaries are the prosecution or defendants (who might be individuals or bodies corporate). For example, it is unclear whether (noting that the orders are made in proceedings for offences), the preponderance of the orders might be in favour of the prosecution (that is, the state). If so, then the retrospectivity could be said to have an adverse effect on individuals against whom costs orders were made.

The retrospective operation of these clauses aims to provide certainty, which could itself be seen as beneficial to all parties.

Committee comment

The committee is satisfied with the retrospective nature of the provisions, given that on balance the retrospective nature could be regarded as beneficial to litigants.

3.1.2 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

3.1.2.1 Delegation of legislative power

Clause 142 introduces a requirement for larger mineral mining leases under the *Mineral Resources Act 1989* to submit a development plan.

Larger mineral mining leases are those that will mine above the threshold prescribed in the Mineral Resources Regulation 2013.

Clause 152 states that a 'prescribed threshold' for a prescribed mineral is an amount prescribed by regulation (the Mineral Resources Regulation 2013).

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.[405]

The prescribing of a threshold, other than through an Act of Parliament, could be seen to not have sufficient regard to the institution of Parliament.

The explanatory notes state:

> *… the inclusion of the power to prescribe the mineral mining lease threshold in subordinate legislation in these circumstances is justified as flexibility is required to add new minerals and adjust thresholds if circumstances warrant a change.*[406]

Committee comment

The committee is satisfied that there has been sufficient regard for the institution of Parliament.

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404 Explanatory notes, p 11.

405 *Legislative Standards Act 1992*, s 4(4)(a).

406 Explanatory notes, p 13.

3.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* 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 sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins. Specific references to the clauses (by number) which are being discussed in the section of the explanatory notes on fundamental legislative principles would assist the reader.

4 Compatibility with human rights

Section 39 of the *Human Rights Act 2019* requires that the portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.

4.1 Human Rights Act 2019

4.1.1 Proposed new industrial manslaughter provisions

Justice Patrick Keane observed in *Magaming v The Queen* (2013) 252 CLR 381 at 414 [105]-[107]), in terms later approved by six justices of the High Court in *A-G (NT) v Emmerson* (2014) 253 CLR 393, 439 [85]: 'It is distinctly the province of the legislature to gauge the seriousness of what is seen as an undesirable activity … and to determine whether a level of punishment should be enacted as a ceiling or a floor'.

That said, s 17(b) of the *Human Rights Act 2019* provides that a person must not be 'punished in a cruel, inhuman or degrading way'.

It is analogous to Article 3 of the European Convention on Human Rights.

A criminal sentence that is grossly disproportionate to an offence may fall foul of Article 3 of the ECHR (*R v Offen* [2001] 1 WLR 253, 276 [95]; *R v Lichniak* [2003] 1 AC 903, 909 [8], 911 [13]; see also *Reyes v The Queen* [2002] 2 AC 35, 248 [30]).

Clauses 11, 30, 157 and 203 of the Bill contemplate maximum penalties of 20 years in prison for persons found guilty of industrial manslaughter within the terms of those provisions.

Twenty years imprisonment is a serious sentence, but it is not an atypical maximum penalty for manslaughter, nor is it a grossly disproportionate penalty for manslaughter where there has been a high degree of negligence on the part of the offender, proven to the criminal standard of beyond reasonable doubt.

Under the Criminal Code a manslaughter charge can also be made out where a negligent act or omission results in death, if the circumstances were such that the Code recognised a duty of care (ss 285 to 290) and where the degree of negligence amounted to criminal negligence.

Regardless of the varied ways that a conviction for manslaughter can come about, all manslaughter convictions under the Criminal Code carry the same maximum penalty: maximum life in prison (s 310). This is in contrast to a conviction for murder which carries *mandatory* life in prison (s 305).

It can also be noted that the WHSA (ss 34C and 34D) contain the offence of industrial manslaughter. Industrial manslaughter under the WHSA carries a maximum penalty of 20 years in prison.

Importantly, cls 11, 30, 157 and 203 do not impose mandatory sentences: a judge sentencing a person under any of these provisions would retain power to make a sentencing order that is proportionate to the crime.

Clauses 11, 30, 157 and 203 are compatible with s 17(b) of the *Human Rights Act 2019*.

4.1.2 Right to liberty and security of the person

Clauses 11, 30, 157 and 203 suspend the application of s 23 of the Criminal Code for the purposes of the new industrial manslaughter offences, because s 23 does not apply to negligence-based offences.

Clauses 11, 30, 157 and 203 of the Bill expressly stipulate that each of the new offences are to be characterised as 'crimes'.

This reinforces a conclusion that these clauses would be read together with relevant Queensland criminal justice legislation and consistently with common law safeguards applicable to criminal proceedings.

Clauses 11, 30, 157 and 203 are considered compatible with s 29 of the *Human Rights Act 2019*.

4.1.3 Right to a fair hearing

As noted above, cls 11, 30, 157 and 203 expressly stipulate that the new industrial manslaughter offences are to be treated as 'crimes'.

This reinforces the conclusion that these clauses would be read together with relevant Queensland criminal justice legislation and consistently with common law safeguards applicable to criminal proceedings.

Furthermore, the new legislation will also operate within a particular constitutional context that reinforces the conclusion that any person charged with an offence under the new provisions will have a fair hearing. All State and Territory courts must be and be seen to be impartial and independent (*North Australian Aboriginal Legal Aid Service v Bradley* (2004) 218 CLR 146, 163 [29]). They cannot be required to act at the dictation of the executive government (*Assistant Commissioner Condon v Pompano Pty Ltd* (2013) 252 CLR 38, 89-90 [125]) and legislation which purports to direct a (Queensland) court as to the manner and outcome of the exercise of their jurisdiction is apt to impermissibly impair the character of the courts as independent and impartial tribunals (*Gypsy Jokers Motorcycle Club Inc v Commissioner of Police* (2008) 234 CLR 531, 560 [39]).

Clauses 11, 30, 157 and 203 are compatible with s 31 of the *Human Rights Act 2019.*

4.1.4 Rights in criminal proceedings

As noted above, cls 11, 30, 157 and 203 expressly stipulate that the new industrial manslaughter offences are to be treated as 'crimes'.

This reinforces the conclusion that these clauses would be read together with relevant Queensland criminal justice legislation and consistently with common law safeguards applicable to criminal proceedings.

Clauses 11, 30, 157 and 203 are compatible with s 32 of the *Human Rights Act 2019*.

Committee comment

The committee is satisfied the Bill is compatible with the *Human Rights Act 2019*.

4.2 Statement of compatibility

Section 38 of the *Human Rights Act 2019* requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Darth Clemerson
002	Karl Barnsdale
003	Shane Anderson
004	Darren Heck
005	Aaron Curtis
006	John Phillips
007	Steffan Ryder
008	Salani Mudongo
009	Australasian Explosives Industry Safety Group Inc
010	Scott Cooper
011	Dan Cawte
012	Joel Treasure
013	Name withheld
014	Tony Hokins
015	Glen Alsemgeest
016	Wade Klowss
017	Mark Norris
018	John Anger
019	Neville Stanton
020	Terry Young
021	Andrew Ede
022	Paul Hetherington
023	Legh Thomasson
024	David Brosnan
025	Bernard Corden
026	Mark Turner

027	Australian Institute of Health and Safety
028	Arrow Energy
029	Unitywater
030	Glencore Coal Assets Australia Pty Limited
031	Damien Wynn
032	Queensland Law Society
033	Idemitsu Australia Resources Pty Ltd
034	Australian Manufacturing Workers' Union
035	Graham Gardner
036	Clayton Stansbie
037	BMC and BMA Site Senior Executives
038	Paul Sear
039	Mark Clarkson
040	Brendan Lynn
041	Benjamin Lang
042	Dr Anne Smith
043	Ken Singer, Queensland Coal Site Senior Executives Forum
044	Andrew McDonald
045	Megan Kline
046	Daniel Proffitt
047	Mine Managers' Association of Australia Inc
048	Ian Cooper
049	WWF-Australia
050	The Australasian Institute of Mining and Metallurgy
051	Cement Concrete and Aggregates Australia
052	Elizabeth Watts
053	Environmental Defenders Office
054	Queensland Resources Council

055	Stewart Euston
056	BHP Group
057	Jason Andersen
058	Westside Corporation Pty Ltd
059	Peabody Energy Australia Pty Ltd
060	The Australian Workers' Union Queensland Branch
061	Mine Ventilation Society of Australia
062	Anglo American Metallurgical Coal Pty Ltd
063	Phillip Nobes
064	Kestrel Coal Resources Site Senior Executives and senior managers
065	Urban Utilities
066	Association of Mining and Exploration Companies
067	Kestrel Coal Resources Pty Ltd
068	Bridget McCall
069	Australian Petroleum Production & Exploration Association Limited
070	Jason Meikle
071	Senex Energy Limited
072	Garth Tongue
073	Electrical Trade Union of Employees Queensland
074	Origin Energy Upstream Operator Pty Ltd
075	Ian Adams
076	QGC Pty Ltd
077	Construction, Forestry, Maritime, Mining and Energy Union, Mining and Energy Division, Queensland District Branch
078	Paul Goldsbrough
079	Dr Ray Parkin OAM
080	John Ninness

Appendix B – Officials at public briefing

Department of Natural Resources, Mines and Energy

- Mr Chris Shaw, Executive Director, Georesources Policy, Policy Division
- Mr Marcus Rees, Director, Georesources Policy, Policy Division
- Mr Robert Djukic, Chief Operating Officer, Resources Safety and Health
- Mr David Wiskar, Executive Director, Water Policy, Policy Division

Appendix C – Witnesses at public hearings

Brisbane public hearing

BHP Group

- Mr James Palmer, Asset President
- Mr Robert Telford, Group Health, Safety and Environment Officer

Australian Petroleum Production & Exploration Association

- Mr Matthew Paull, Queensland Policy Director
- Mr Robert Hirst, Chair, Health and Safety Operators' Committee
- Ms Michelle Zaunbrecher, Vice President, Health, Safety and Environment, Arrow Energy
- Mr Gary Williams, General Manager, Risk, Assurance, Compliance and Process Safety, Origin Energy
- Mr Tim Johnston, Health Safety Security and Environment Manager QGC Upstream, Shell
- Mr Michael Jennings, Senior Health and Safety Manager, Senex Energy
- Mr John Sarto, Onshore Health, Safety and Environmental Risk Manager, Santos
- Ms Nimandra Gunasekera, Company Representative, Westside Corporation

Queensland Resources Council

- Mr Ian Macfarlane, Chief Executive
- Mrs Judy Bertram, Deputy Chief Executive, Policy Director, Community and Safety
- Mr Shane Hansford, Manager, Health and Safety
- Ms Emma Hansen, Assistant Policy Director, Resources

WWF-Australia

- Mr Nigel Parratt, Water and Catchment Liaison Officer

Mine Managers' Association of Australia

- Mr John Sleigh, Vice President – Northern Region

Mine Ventilation Society of Australia

- Mr Michael Shearer, President

Queensland Law Society

- Mr Luke Murphy, President
- Mr James Plumb, Chair, Mining and Resources Law Committee
- Ms Rebecca Pezzutti, Member, Industrial Law Committee

Department of Natural Resources, Mines and Energy

- Mr Chris Shaw, Executive Director, Georesources Policy, Policy Division
- Mr Kahil Lloyd, Manager, Georesources Policy, Policy Division
- Mr Mark Stone, Executive Director, Resources Safety and Health
- Mr David Wiskar, Executive Director, Water Policy, Policy Division

Moranbah public hearing

Queensland Coal Site Senior Executives (SSE) Forum

- Mr Ken Singer, Chair, Queensland Coal SSE Forum
- Mr Dan Proffitt, SSE, Kestrel Mine
- Mr Paul Sear, SSE, Collinsville Mine
- Ms Liz Watts, SSE/General Manager, BMA
- Mr Neville Stanton, SSE, North Goonyella Mine
- Mr Andrew McDonald, SSE, Rolleston Mine
- Mr Damien Wynn, SSE, Grasstree Mine

Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) – Mining and Energy Division, Queensland Branch

- Mr Stephen Smyth, District President, Mining and Energy Division, Queensland Branch
- Mr Jason Hill, Industry Safety and Health Representative
- Mr Stephen Woods, Industry Safety and Health Representative
- Mr Steve Watts, Industry Safety and Health Representative

Open microphone

- Mr Scott Leggett, private capacity
- Mr Brodie Brunker, private capacity
- Mr Phillip Taylor, private capacity

Statement of reservation

Mineral and Energy Resources and Other Legislation Amendment Bill 2020
Non-government Members' Statement of Reservation

The non-government members of the State Development, Natural Resources and Agricultural Industry Development Committee would like to place on the record their concerns regarding the Mineral and Energy Resources and Other Legislation Amendment Bill 2020.

This bill was drafted in response to the sudden spike in mining and quarrying workplace fatalities. There have been eight such fatalities since the 29th of July 2018. Unfortunately, the non-government members of the committee do not believe that the provisions in this bill will achieve the desired outcome.

This is in no small part due to the lack of consultation on some of the significant and more contentious provisions of this bill, such as the introduction of industrial manslaughter and the appointment of statutory office holders.

The industry was directed to participate in 'industry safety re-sets' during July and August 2019 and an expert review, ordered by the Minister, was undertaken by Dr Sean Brady who reported in December 2019. Neither the industry re-sets nor the Brady Review recommended that industrial manslaughter charges be introduced, nor that statutory office holders be only direct employees of the coal mine operator.

Industrial Manslaughter

Whilst industrial manslaughter measures were supported by the CFMMEU and AWU the Queensland Law Society (QLS) stated:

> *The Queensland Law Society does not support the introduction of the industrial manslaughter offences into the resources safety acts. There are existing criminal offences in these acts which capture conduct, both acts and omissions that causes a fatality, as well as offences in the Criminal Code which do the same.*[407]

Many submitters were concerned that these provisions would capture mine workers in operational roles beyond the senior officers of the corporation.

This was also raised by the Queensland Resources Council (QRC) who stated:

> *Resource workers like SSEs, SSMs, safety certificate holders and the people identified in the management structure of a mine are not executive officers of the corporation. They do not have the capacity to affect significantly the corporation's financial standing but are simply employed to work at the operation using the resources they are given.*[408]

Submitters such as BHP also expressed their concern:

> *Our SSEs are concerned that they could be captured by the industrial manslaughter offence and become a target once the new laws commence and be punished despite their best efforts and overwhelming commitment to mine safety. Moreover, SSEs already carry liabilities under the CMSH Act in the event of a failure to meet these responsibilities, including maximum penalties of up to $400,350.00, or three years imprisonment.*[409]

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[407] Ms Pezzutti, QLS, public hearing Hansard, Brisbane, 3 March 2020, p 28.

[408] Submission 54, p 9.

[409] Submission 56, p 2.

The vast number of submissions received for this inquiry recommended that site senior executives, site safety managers, underground mine managers, open cut examiners and ventilation officers should not be captured in the industrial manslaughter provisions of this bill.

Interestingly, the CFMMEU suggested that that the legislation be extended to all workers on site. Mr Stephen Smyth the District President of the Mining and Energy Division Queensland Branch stated, at the public hearing at Moranbah:

> *In relation to senior officers, we think that industrial manslaughter should apply—and excuse me—from the ….house cleaner to the boardroom. It should be consistently applied. Our concern is that if you start to exempt people then you will not get the core decision-makers. If you suddenly say, 'I'm going to exempt the statutory people, the deputies or OCEs and this supervisor, that supervisor and the SSE, you will never get to the top of the tree in the boardroom because the law will not allow you to get there. We want to make sure laws are in place that protect workers so they can return home to their families, so it has to be consistent across-the-board.*
>
> *It may surprise a few people that we have taken that view, but we have taken that view because you have to be consistent—we are fair dinkum about this: it must apply to everybody—so the senior officer will understand.*[410]

Many submitters are concerned that the legislation will result in adverse consequences such as a reluctance to take on statutory roles or share information for fear of self-incrimination. QLS submitted:

> *…the introduction of industrial manslaughter provisions may also have the unintended consequence of compromising individuals' willingness to participate in safety investigations following fatal accidents, including investigations which SSEs are obliged to undertake.*[411]

Statutory Office Holders

The amendment that would require that only employees of the coal mine operator could be appointed as a statutory office holder has caught the industry by surprise as there has been no consultation with resource operators on this amendment and no evidence that would support the change. Under this legislation a contractor to the mine would no longer be able to hold the position of a statutory officer.

QRC noted that the requirement for all statutory position holders at a coal mine to be employed by the coal mine operator represents an unreasonable and unjustified regulatory burden which was not subjected to consultation with industry or a regulatory impact assessment.

Anglo-American Site Senior Executives noted in their submissions:

> *This is a complex area where there has been no consultation with the industry to understand the likely implications, including a shortage of statutory positions in Queensland that cannot be filled under the current system. The requirement would also necessitate changes to hundreds of contractual arrangements for mining services, which apart from the compliance burden, may also have other unintended consequences for our operations that we have not yet had the opportunity to consider.*[412]

The explanatory notes state:

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[410] Public hearing transcript, Moranbah, 3 March 2020, pp 11-12.

[411] Submission 32, p 4.

[412] Submission 62, p 2.

This will ensure that statutory office holders can make safety complaints, raise safety issues or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.[413]

This was not an issue reflected in the safety resets or the Brady Review nor was there any evidence presented to the committee that contract statutory office holders were not reporting safety breaches for fear of losing their job as opposed to direct employees.

BHP outlined their participation in the Queensland mining industry's safety resets:

We actively participated in the Queensland mining industry's safety re-set during July and August 2019. More than 11,600 employees and contractors across our Queensland operations took part in approximately 400 sessions.[414]

The committee sought a quantification of the feedback from the safety resets about fear of raising genuine safety incidents. DNRME advised:

22 people raised employment status as a reason for not raising safety issues.[415]

22 out of 52,000 workers at 1,197 resets would not appear as any justification for this significant and extreme amendment.

Indeed, the committee heard evidence that contract statutory office holders were more likely to report safety concerns.

Mr Andrew McDonald from the SSE Forum confirmed the benefit of having contractors on site to raise safety concerns:

Our mine is set up with around 70 per cent full-time employment and 30 per cent contractors. We did a review back through our hazard reporting process for the last 12 months. When I pulled the numbers out, it surprised me. Some 68 per cent of all hazards reported came from the contractor base and only 32 per cent from the full-time employee base. To me, that is telling us that our full- time employees have become very acclimatised to it. It is what they do every day. They are starting to move past hazards that the contractors are seeing and recognising from other sites.[416]

Mr Dan Proffitt claimed that statutory officers and coal mine workers often seek different employment arrangements and that this difference is neglected in the bill:

I believe the reason behind the perception this change is needed has been incorrectly interpreted from the safety reset feedback. The majority of contractors that do the statutory roles within industry actually prefer to remain contract. This is in stark contrast to contract coal mine workers on the shop floor level who are constantly chasing a permanent role.[417]

The committee heard that the corporate structures in mining are complex and involve joint ventures, partnerships and structures within individual companies.

This is why contract statutory office holders are in demand in the industry as they can easily fit into new roles and relieve in situations where the office holder has taken leave or is ill.

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[413] Explanatory notes, p 6.

[414] Submission 56, p 1.

[415] Department of Natural Resources, Mines and Energy, correspondence dated 9 March 2020, p 2.

[416] Public hearing transcript, Moranbah, 3 March 2020, p 7.

[417] Submission 46, p 2.

It is not the government's role to tell workers who they must work for. Worker safety is paramount and the LNP treat this issue very seriously, we support any constructive and workable measures to improve workplace safety.

Unfortunately, this bill is more about being seen to do something rather that working and consulting with the entire industry to address the underlying problems and failures.

This legislation may receive the headlines and media coverage that the Minister is seeking, however, unless the underlying issues are addressed, we are likely to see more fatalities.

Pat Weir MP
Member for Condamine
Deputy Chair SDNRAID

Brent Mickelberg MP
Member for Buderim
Shadow Assistant Minister for Tourism Industry Development

David Batt MP
Member for Bundaberg
Shadow Assistant Minister for State Development