Parliamentary Committees



Mines Legislation (Resource Safety) Amendment Bill 2017

Report No. 57, 55th Parliament
Infrastructure, Planning and Natural Resources Committee
October 2017

Infrastructure, Planning and Natural Resources Committee

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Acknowledgements

The committee acknowledges the assistance provided by the Department of Natural Resources and Mines.

Contents

Abbreviations

BOD	Board of Examiners
CFMEU	Construction, Forestry, Mining & Energy Union
CMSHA	*Coal Mining Safety and Health Act 1999*
CMSHAC	Coal Mining Safety and Health Advisory Committee
CWP	coal workers' pneumoconiosis
DNRM	Department of Natural Resources and Mines
MMAA	Mine Managers' Association of Australia
MQSHA	*Mining and Quarrying Safety and Health Act 1999*
MSHAC	Mining Safety and Health Advisory Committee
QRC	Queensland Resources Council
RIS	Regulatory Impact Statement
SHMS	safety and health management system
SSE	site senior executive
the Bill	Mines Legislation (Resources Safety) Amendment Bill 2017
the department	Department of Natural Resources and Mines
WHS Act	*Work Health and Safety Act 2011*

Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resources Committee's examination of the Mines Legislation (Resources Safety) Amendment Bill 2017.

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

The Mines Legislation (Resources Safety) Amendment Bill 2017 proposes 15 reform initiatives across the *Coal Mines Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*. These amendments seek to provide for greater transparency and accountability, improved safety and health systems, and stronger enforcement and compliance powers within the mine safety and health framework.

There will always be significant hazards associated with the mining industry. The Mine Managers' Association of Australia (MMAA), in their evidence to this inquiry, outlined recent mining tragedies in New South Wales, Queensland and in New Zealand which have shaped the mine safety and health framework in Queensland:

> *In little more than 50 years there have been 8 tragic mining incidents in Queensland, NSW and New Zealand where there were several lives lost. It is important to our members that the lessons learned from these calamities are not lost by the industry.*
>
> *Following the death of 4 miners in 1965 in a fire at Bulli Colliery in NSW the legislation was changed to prohibit unqualified supervisors giving directions to statutory officials.*
>
> *In 1972, seventeen people were killed while dealing with a spontaneous combustion event at Box Flat mine in Queensland. A precursor to SIMTARS was established following that incident. The inquiry also recommended "that any person who is appointed to make technical decisions that affect the Manager's authority regarding the safety of the mine must be qualified as a Manager under the Act and shall be responsible under the Act."*
>
> *Kianga mine exploded in 1975. The inquiry recommended that the research facilities that were instituted following the Box Flat disaster be expanded to include training and research in gases and spontaneous combustion. It also recommended that the education program for mineworkers and mining officials be upgraded.*
>
> *After 13 miners were killed in an explosion at Appin in 1979 the position of Ventilation Officer was introduced.*
>
> *When Moura number 4 mine exploded in 1986, killing 12, again the inquiry highlighted the need for research and training and emphasised the role of statutory officials.*
>
> *In 1996 an inrush at Gretley Colliery in New South Wales led to four miners being drowned. The subsequent investigation led to the formalisation of the risk assessment process in mines.*
>
> *A further explosion at Moura number 2 mine in 1994, killing 11 miners, led to the current Queensland legislation replacing an Act and Regulations which traced their origins to the Mount Mulligan explosion in 1921.*
>
> *It is regrettable that 29 miners were killed in New Zealand in 2010, and a subsequent Royal Commission recommended the adoption of the Queensland standards. The respect with which the Queensland industry is held is reflected in the appointment of the then Queensland Commissioner for Mine Safety and Health to a seat on the Royal Commission.*[1]

[1] Mine Managers' Association of Australia, Submission 3, p 2.

It is acknowledged by many that Queensland's mine safety and health acts and regulations are world's best practice, but as this Bill and inquiry recognise, there is room for improvement and there is no place for complacency in mine worker safety and health.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on the Bill and who have given evidence at the public hearing. I also thank the Department of Natural Resources and Mines, and the committee's secretariat.

I commend this Report to the House.

Jim Pearce MP

Chair

Recommendations

The committee recommends the Mines Legislation (Resources Safety) Amendment Bill 2017 be passed.

The committee recommends that in his second reading speech the Minister outline the reasons for the proposed amendments to the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* which will provide the Minister discretionary power to appoint a person to the Coal Mining Safety and Health Advisory Committee or the Mining Safety and Health Advisory Committee, even if the person does not have the required 'coal mining operations' experience.

The committee recommends the Bill be amended to ensure that the Chief Inspector (under the *Coal Mining Safety and Health Act 1999*) and the Chief Inspector of Mines (under the *Mining and Quarrying Safety and Health Act 1999*) hold, at a minimum, a First Class Certificate of Competency in the corresponding type of mining for which they are the Chief Inspector.

1 Introduction

1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[2]

The committee's areas of portfolio responsibility are:

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

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

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

The Mines Legislation (Resources Safety) Amendment Bill 2017 (Bill) was introduced into the House and referred to the committee on 7 September 2017. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the committee to report to the Legislative Assembly by 23 October 2017.

1.2 Inquiry process

On 8 September 2017, the committee wrote to the Department of Natural Resources and Mines (DNRM) seeking advice on the Bill, advertised its inquiry and invited stakeholders and subscribers to lodge written submissions by the 22 September 2017.

The committee received nine submissions (see Appendix A). On 29 September 2017, the committee received written advice from the department in response to matters raised in submissions.

The committee held a public briefing with the department on 25 September 2017 (see Appendix B). A public hearing was held on the Bill in Brisbane on 25 September 2017 (see Appendix C).

1.3 Policy objectives of the Mines Legislation (Resources Safety) Amendment Bill 2017

Consideration of amendments to the mine safety and health framework commenced in 2013.[3] The re-identification of coal workers' pneumoconiosis (CWP) in Queensland in 2015 and the findings of the Coal Workers' Pneumoconiosis select committee,[4] focused the need to improve the mine safety and health legislative framework in this State.

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

- ventilation officer competencies
- inspector powers including inspector workplace entry

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

3 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 22.

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

- manufacturer, supplier, designer and importer notification requirements
- contractor and service provider management
- advisory committees and Board of Examiners membership
- safety and health management system (SHMS) requirements
- register to be kept by board of examiners
- health surveillance
- notification of diseases
- release of information
- penalties
- officer obligations
- continuing professional development
- suspension or cancellation of certificates of competency and site senior executive (SSE) notices and
- civil penalties.[5]

1.4 Consultation on the Bill

The explanatory notes outline the consultation which has been undertaken in regard to mine safety and health framework and the amendments progressed in this Bill:

> *DNRM released a Consultation Regulatory Impact Statement (RIS) titled Queensland's Mine Safety Framework in 2013 which outlined policy options for addressing the identified issues within the CMSHA and the MQSHA. The department received 246 responses at that time. Following analysis of submissions and further discussion with key stakeholders, multiple proposals outlined in the Consultation RIS did not to* [sic] *proceed. A Decision RIS was prepared in 2014, but the Decision RIS was not released at the time.*
>
> *Given the time lapse of the extensive consultation in 2013 to early 2016 and the potential of the feedback being outdated, the department formed tripartite working groups consisting of industry, union and departmental participants in February 2017 to consult on the essential proposals to be progressed in a Bill. The final proposals are broadly supported by industry and union. The advisory committees, established under the CMSHA and MQSHA, were also advised of the proposals.*
>
> *The proposals relating to imposing civil penalties and the power for the chief executive to suspend of* [sic] *cancel a statutory certificates of competencies were the subject of limited consultation in August 2017. Industry did not indicate support for proposals to increase penalties or impose civil penalties, however this change brings mines into alignment with other workplaces. Industry has also raised concerns regarding the implementation of the proposal to require continuing professional development for certificate of competency holders, but in principle see benefit in the proposal. Further consultation will occur when the regulation is developed to implement the proposal.*
>
> *Previous consultation to all government agencies in early 2017 resulted in concerns being expressed in relation to proposals not included in this Bill. The changes being delivered through this Bill that were subject to that earlier consultation were generally supported by all agencies.*

[5] Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 1.

The Office of Best Practice Regulation, Queensland Productivity Commission, has provided RIS exemptions for the amendments to introduce civil penalties and the power to suspend or cancel statutory certificates. Eight of the other amendments in the Bill require a post implementation review.

Other legislative proposals included in this submission were reviewed by the Queensland Productivity Commission in 2016 and 2017 and were assessed as unlikely to result in any significant adverse impacts. As such, further analysis under the Queensland Treasurer's RIS guidelines is not required.

The mines inspectorate within the Department of Natural Resources and Mines has worked with small scale and gem mines in recent years in order to prepare them for the SHMS requirements being established by the Bill. Unlike larger operators, it is recognised that smaller scale opal and gemstone mine operators may not have the administrative capability to set up and implement these systems. To assist, the mines inspectorate will provide resources including a simple SHMS template to assist small mine operators. Industry associations will be used to help implement the SHMS requirement.[6]

Committee comment

The explanatory notes outline that:

Previous consultation to all government agencies in early 2017 resulted in concerns being expressed in relation to proposals not included in this Bill. The changes being delivered through this Bill that were subject to that earlier consultation were generally supported by all agencies.

The committee has formed the view that there is an increasing tendency by the department to consult other government departments and agencies on bills and that this is taken to be adequate.

The committee notes the department's assertion that:

Given the time lapse of the extensive consultation in 2013 to early 2016 and the potential of the feedback being outdated, the department formed tripartite working groups consisting of industry, union and departmental participants in February 2017 to consult on the essential proposals to be progressed in a Bill… [and that] the advisory committees, established under the CMSHA and MQSHA, were also advised of the proposals.[7]

However, witnesses to this inquiry contended that key stakeholder groups were not consulted on the current legislation. The Construction, Forestry, Mining & Energy Union (CFMEU) told the committee:

If it was not for this committee the industry operators and employees' representatives would not have had a chance to input to the content of the bill.[8]

Similarly:

The Board of Examiners would like it noted that, as stakeholders, they were not consulted as part of the amendment process.[9]

Additionally, the Queensland Resources Council (QRC) noted:

I would like to make a couple of general comments regarding the bill. My first comment concerns the process for preparing and consulting on the bill. While I know that some of the issues hark

6 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, pp 22 - 23.

7 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, pp 22 - 23.

8 Mr Greg Dalliston, CFMEU, public hearing transcript, Brisbane, 25 September 2017, p 17.

9 Submission 6, p 3.

> *back to the regulatory impact statements of 2013, I would comment that that is quite a while ago. Some others have only just recently surfaced and have had virtually no consultation.*[10]

The committee continues to be disappointed and concerned in regard to the department's lack of stakeholder consultation. Despite the department's contention that stakeholders were consulted on the current bill, stakeholders have argued that this was not the case. The committee strongly believes that the department must consult with all mining industry stakeholders that that consultation occur in a manner that is both inclusive and timely.

Witnesses raised concerns that this lack of stakeholder consultation will lead to adverse effects on coalmine workers' safety and health. The CFMEU argued that:

> *The current bill, while containing a number of matters to be changed, contains wording that, if implemented, would have adverse effects on coalmine workers' health and safety. The union believe there are a number of matters which have not been considered in this bill and some matters which should form part of the bill*[11]*... If we had proper consultation where we sat down together, we think that some of those could have been fixed. Now, we have a bill sitting in parliament that has had a first reading. We would not have had anything, except we have come here today to express our concerns.*[12]

The QRC also noted the increased risk of unintended consequences in the current legislation as a result of limited stakeholder consultation:

> *This bill comes very quickly on the heels of a mine safety and health authority bill, meaning that the industry has had a lot of proposals to absorb in the last short space of time. QRC is concerned that the process has been rushed to the point that we risk unintended consequences.*[13]

The CFMEU raised concerns that the recent organisational restructure within the department, to consolidate the department's policy functions and created a new mineral and energy resources policy team[14], has and will limit stakeholder engagement.[15]

In response, the Executive Director of the Mine Safety and Health Division informed the committee that:

> *The policy group within DNRM are highly experienced in developing legislation and taking policy principles from the government of the day and other stakeholders and developing them into legislative text that can be used and interpreted in an act. The process for those individuals who largely do not have that subject matter expertise is that it is provided to them through meetings and consultation and discussion. They have a close working relationship with OQPC—with the drafters—but interpreting policy positions, making them workable and trying to ensure that they achieve the outcome desired is an iterative process.*[16]

The committee notes the organisational restructure within DNRM to create a policy group and the policy expertise of this group. However, the committee considers departmental policy officers will not have the necessary knowledge in relation to operational aspects of mining and mine safety and health and therefore will be unable, in isolation, to develop mining workplace policy and legislation which is practical or effective. The committee believes that mining industry stakeholders and officers from DNRM with operational experience must be included in the development of mining legislation. As Mr

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10 Mr Macfarlane, QRC, public hearing transcript, Brisbane, 25 September 2017, p 8.

11 Mr Dallison, CFMEU, public hearing transcript, Brisbane, 25 September 2017, p 17.

12 Mr Dallison, CFMEU, public hearing transcript, Brisbane, 25 September 2017, p 22.

13 Mr Macfarlane, QRC, public hearing transcript, Brisbane, 25 September 2017, p 8.

14 Mr Hinrichsen, DNRM, public hearing transcript, Brisbane, 25 September 2017, p 32.

15 Mr Dallison, CFMEU, public hearing transcript, Brisbane, 25 September 2017, p 19.

16 Mr Stone, DNRM, public hearing transcript, Brisbane, 25 September 2017, p 31.

Smalley submitted, 'features of mine safety are better understood from the inspectorate who work in these areas and are accustomed to the difficulty encountered'.[17]

The committee also considers that to avoid unintended consequences and costs[18] it is critical that the regulatory impact statement (RIS) is current and that legislation is not developed on a RIS which is outdated or developed without input from all stakeholders.[19]

The committee appreciates that the proposed development of the mine safety and health framework has been a lengthy process. The committee acknowledges that all stakeholders believe that greater consultation was and is required, however the committee has formed the view that given the current political cycle this Bill is critical in progressing needed improvements to the mine safety and health framework. As the CFMEU told the committee:

> *If some of the legislation comes into place now, some of it will be good. But do you put in legislation that still has holes in it and say that at least we have some, or do you say we should have fixed it first and then put it in? The issue is with another upcoming election, we know what happens there. It will be another six months—it does not matter who gets back into government—before we touch it again. If it has to go through another reading, it could be another year if we do not put this through now… Nine out of the last 11 people killed were contractors or labour hire since 2008. In nine years we have killed another 11 people. What are we going to do? Our option would be to put what we have in place now but knowing that it has to be fixed. Some of it should be fixed before it goes in there; it would not be that hard. It is not a matter of rewriting the whole lot: it is a matter of a couple of changes.*[20]

1.5 Should the Bill be passed?

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

After examination of the Bill, including the policy objectives which it will achieve and consideration of the evidence received during to inquiry, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Mines Legislation (Resources Safety) Amendment Bill 2017 be passed.

17 Mr Smalley, Submission 2, p 1.

18 Mr Macfarlane, QRC, public hearing transcript, Brisbane, 25 September 2017, p 13.

19 Mr Dallison, CFMEU, public hearing transcript, Brisbane, 25 September 2017, p 18.

20 Mr Dallison, CFMEU, public hearing transcript, Brisbane, 25 September 2017, p 23.

2 Examination of the Mines Legislation (Resources Safety) Amendment Bill 2017

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

2.1 Ventilation officer competencies

The Bill proposes to enhance the qualification requirements for the role of ventilation officer for an underground mine. The replacement section 61 requires the underground mine manager to appoint a ventilation officer for an underground mine. Additionally the section requires that:

- the underground mine manager may be appointed by the site senior executive (SSE) as the ventilation officer
- only a person holding a certificate of competency for ventilation officers granted by the Board of Examiners (the Board) must be appointed to the role of ventilation officer
- the ventilation officer is responsible for establishing effective standards of ventilation for, and implementation of the ventilation system for, the mine, and
- the underground mine manager must not appoint an individual as the ventilation officer for more than one underground mine, unless the chief inspector is satisfied the person can effectively carry out the duties at both mines.[21]

A number of submitters supported the amendments in regard to ventilation officers.[22] Mr Taylor from the MMAA told the committee:

> *On the ventilation officer competency, we are fully supportive of the requirement for ventilation officers to undertake a practical examination. Whilst the course is required as a prerequisite and provides excellent theoretical knowledge, too often there have been incidents of individuals not being able to translate the theoretical knowledge into practical application. The introduction of a practical exam will provide comfort that those charged with the management of potentially critical hazards have both the theoretical and practical skills to manage those hazards.*[23]

The QRC noted that while they had not previously supported additional statutory positions in relation to ventilation officers, nor the additional certification requirements, given the increased focus on acceptable level of risk from exposure to respirable mine dust, the QRC did support this proposal in the Bill.[24]

Proposed Section 61A (2) makes the Underground Mine Manager automatically the ventilation officer if the appointed ventilation officer is absent from the mine for less than seven days. The QRC suggested that the proposed requirement for an alternate ventilation officer to be appointed if the ventilation officer is away for more than seven days should be extended to 14 days to reduce unnecessary impacts on mining operations.[25]

The CFMEU raised its concerns that the Bill only allows for a single ventilation officer to be appointed and that mine work rosters involve longer shifts and rotations, and therefore will require a number of qualified ventilation officers to cover this work pattern.[26]

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21 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 30.

22 See: Board of Examiners Submission 6 and Submission 8.

23 Mr Taylor, Mine Managers Association of Australia, public hearing transcript, Brisbane, 25 September 2017, p 26.

24 Mr Macfarlane, QRC, public hearing transcript, Brisbane, 25 September 2017, p 8.

25 Mr Macfarlane, QRC, public hearing transcript, Brisbane, 25 September 2017, p 8.

26 CFMEU, Submission 7, p 7.

In response to the concerns raised by QRC, the department noted:

> *The proposed 7 day timeframe for the appointment of a replacement ventilation officer (i.e. when the ventilation officer for an underground coal mine is absent) is justifiable considering the importance of the role for an underground coal mine.*[27]

Additionally, the department noted that new section 61(2):

> *… does not require multiple ventilation officers to be appointed to ensure personal attendance of a ventilation officer during all hours of a mine's operations. However, the appointed ventilation officer must ensure that they can discharge the functions of a ventilation officer as prescribed under the Act and regulation.*[28]

Committee comment

The committee notes the seven day timeframe for the appointment of a replacement ventilation officer. However, the committee considers that best practice should be less than seven days and that a ventilation office should be present on a daily basis.

2.2 Inspector powers - including inspector workplace entry

The Bill proposes to amend the current obligation and entry provisions to provide a power to enter workplaces, including those workplaces off the mine site, without permission or requiring a warrant.[29]

The explanatory notes argue that existing workplace entry powers under the CMSHA and MQSHA are reasonably broad, applying (with some limitations) to mines and quarries as well as to workplaces (as defined under the WHS Act) and public places. Currently inspectors can enter mine sites but there are legislative gaps in respect to entering some off-mine site workplaces, where activities affecting the safety and health of mine workers may still be carried out.[30] Mr Hinrichsen provided an example as to why the amendment was needed:

> *There was an investigation that was undertaken in association with a fatality on a mine site where it was identified that the fault in the equipment was as a result of some off-site work in a workshop that was not on the actual mine site. In that case the inspectorate was not able to, through its normal powers, gain access to that off-site workshop. If that workshop had been on the mining lease under the existing framework they would have had the powers, but with increasing outsourcing and contracting an off-site facility is just as relevant as something on site. There was no ability through the normal powers that exist for the inspectorate to gain access to that worksite to gather evidence to conduct interviews with those who had been conducting the work on that site.*[31]

The committee sought to clarify the extent of the proposed powers of entry to ensure that the proposed powers did not go too far. The committee were told that:

> *The provisions in the bill expand those powers of entry to places other than mine sites. For example, we have an increase in remote operations, or activities related to the operations of the mine happening off lease at remote locations. This will allow inspectors to enter those places as well as the places on the lease itself… It is not an exhaustive list, because it will depend upon the*

27 Department of Natural Resources and Mines, Correspondence 29 September 2017, p 3.

28 Department of Natural Resources and Mines, Correspondence 29 September 2017, p 2.

29 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 7.

30 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 7.

31 Mr Hinrichsen, DNRM, public briefing transcript, Brisbane, 25 September 2017, p 5.

situations. Generally, if there is a connection to the operation of the mine site, that will extend that ability for the inspector to enter that place.[32]

The QRC were not opposed to the proposal noting:

In relation to inspector powers for workplace entry, the QRC is not opposed in principle to this proposal in the bill, but is uncertain whether it is actually needed. Investigators need reasonable access to all relevant material if we are to understand and learn from serious accidents and to effectively prosecute those who breach the legislation.[33]

The committee notes that a submission from a member of the Board of Examiners did not support greater entry powers.[34] In response the department noted:

The proposed amendments address ambiguity and limitations associated with current powers to enter off-site workplaces. The amendment, as currently drafted, reflects the intent of providing broader powers for officers to enter places that are, or the officer reasonable suspects are, workplaces. The purpose of the amendments is to strengthen workplace entry powers available under the CMSHA and MQSHA and to provide certainty regarding the power of inspectors to enter and conduct inspections, investigations and audit compliance at workplaces that have the potential to affect the safety and health at mines. The scope of the entry will continue to be limited by the objects of the CMSHA and MQSHA and the functions and powers of inspectors under these Acts.[35]

Committee comment

The committee is satisfied with the explanation provided by the department and given that this bill seeks to strengthen enforcement and compliance powers by implementing amendments to the CMSHA and MQSHA, the committee is satisfied with the amendments.

2.3 Advisory committees and Board of Examiners membership

The Coal Mining Safety and Health Advisory Committee (CMSHAC) and the Mining Safety and Health Advisory Committee (MSHAC) each consist of nine members, one of whom is the chairperson. The chairperson of each committee is the Commissioner for Mine Safety and Health. Other than the Commissioner, each committee has three members representing industry workers, three representing mine operators and two members from the mines inspectorate. Historically the person appointed to the Commissioner for Mine Safety and Health role was also a departmental employee, meaning equal tripartite representation across each committee.[36] The committee notes that following the appointment of an independent Commissioner in 2016, there is no longer an equal number of departmental representatives compared with mine operator and worker representatives on the committees.[37]

The Bill proposes to increase the number of departmental (mines inspectorate) members of the committee from two to three members, to bring the total number of members on each committee to 10 persons (including the Commissioner). The Commissioner for Mine Safety and Health informed the committee that the amendment was necessary as the current Commissioner for Mine Safety and Health is no longer a dual role:

The person not only has been a commissioner but also had an executive position in the inspectorate. Therefore, when the advisory committee met at their meetings, they had equal

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32 Mr Djukic, DNRM, public briefing transcript, Brisbane, 25 September 2017, pp 3 - 4.

33 Mr Macfarlane, QRC, public hearing transcript, Brisbane, 25 September 2017, p 8.

34 Board of Examiners, Submission 8.

35 Department of Natural Resources and Mines, correspondence 29 September 2017, p 3.

36 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 8.

37 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 31.

representation on that committee. We had three from the union, three from the industry and three from the inspectorate. However, my role is now independent and I do not hold the view of the inspectorate; I hold an independent view. Sometimes I agree with them; sometimes I do not. Therefore, because of that, the inspectorate has only two people on that advisory committee whereas all the other stakeholders have three.[38]

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

This amendment recognises that the Commissioner is now more independent of the Mines Inspectorate and should not be "counted" as an Inspectorate representative. QRC has supported the independence of the Commissioner, and therefore supports the proposal.[39]

The Bill also provides the minister discretionary power to appoint a person from a panel even if the person does not have the required 'coal mining operations' experience (which has a defined meaning under the CMSHA). A number of submitters raised concerns in regard to this amendment.[40]

The MMAA did not support ministerial discretion to appoint a person to CMSHAC arguing that all members on the CMSHAC be experienced in coal mining operations. The MMAA also recommended that at least one operator representative be a practicing underground mine manager or site senior executive with a first class mine manager's certificate of competency:

Whilst we acknowledge and understand the potential requirement for a Ministerial discretionary power relating to the M&QSHAC (Mines and Quarries Safety and Health Advisory Committee) that must, in our opinion, never be the case when it applies to the CMSHAC. It is critical that all members on this Committee be "experienced in coal mining operations".[41]

The department responded to these concerns arguing:

The provisions allows the Minister to appoint an appropriately qualified person. This does not necessarily mean that the person is not technically qualified, however it enables the Minister to appoint a person who the Minister deems is suitable to provide the appropriate level of advice required. [42]

QRC noted the provision to allow ministerial discretion in regard to advisory committee appointments facilitated greater experience on these committees as needed:

The QRC believes that the principle of ensuring advisory committees have enough practical experience is important. However, it is also noted that the committees could benefit from a broader range of experience in their membership. The recent example of the coal advisory committee having to deal with CWP demonstrates that this committee may have benefited from additional health or hygiene expertise. The QRC therefore supports this proposal in principle provided the committee still retain adequate practical mining experience to remain effective.[43]

In regard to these concerns the department argued:

The provisions, as drafted, are consistent with the essential objective of maintaining practical mining experience on the committees. Clause 21 proposes amendments to section 80(4) of the CMSHA which will provide the Minister discretionary power to appoint a person from a panel even if the person does not have the required 'coal mining operations' experience (which has a

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38 Mrs du Preez, Commissioner for Mine Safety and Health, public hearing transcript, Brisbane, 25 September 2017, p 3.

39 QRC, Submission 9, p 11.

40 See Submission 3 and Submission 7.

41 Mine Managers' Association of Australia, Submission 3, p 3.

42 Department of Natural Resources and Mines, correspondence 29 September 2017, p 4.

42 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 33.

43 QRC, Submission 9, p 12.

defined meaning under the CMSHA). Clause 68 proposes similar amendments to the MQSHA. While 'operations' experience is highly regarded, at times, proposed representatives for appointment will not be able to meet the experiential requirement. This has particularly been an issue for worker representatives proposed for appointment to the mining safety and health advisory committee under the section 71 of the MQSHA; however, the proposed amendments will ensure consistency across both the CMSHA and MQSHA.[44]

The Bill additionally provides that the chief inspector (under the CMSHA) and the chief inspector of mines (under the MQSHA) are members of the Board of Examiners[45] and their appointments may be made by the title of an office and that the appointee is taken to be the person occupying or acting in the office.[46]

Some submitters raised concerns that the proposed amendment appointing chief inspectors by position fails to ensure the appointed chief inspector holds the corresponding certificate of competency. These submitters recommended that, as a minimum, the chief inspector should hold a first class certificate of competency for the type of mining for which they are chief inspector. [47]

The committee notes that the Bill proposes to remove the current requirement under CMSHAC s 186(4) which states:

(4) At least 2, but no more than 3, members must be inspectors, of

whom—

(a) at least 1 must hold a first class certificate of competency for an underground coal mine; and

(b) at least 1 must hold a first class certificate of competency for an underground mine under the Mining and Quarrying Safety and Health Act 1999.

Amended s186(4) states:

(2) Section 186(4)—

omit, insert—

(4) In addition to the members mentioned in subsection (3A), 1 member may be an inspector who holds—

(a) a first class certificate of competency for an underground coal mine; or

(b) a first class certificate of competency for an underground mine under the Mining and Quarrying Safety and Health Act 1999.

The CFMEU told the committee:

… the new regulation makes the chief inspector of metalliferous and the chief inspector of coal automatic members of the board of examiners, which gives out statutory tickets for all of the other positions. The government has just made some ridiculous decision that, to be the chief inspector of metalliferous mines, you do not need a first-class metalliferous ticket. Here is a board that gives out first-class tickets. The only ticket it gives out for metalliferous is a first-class ticket, yet the chief inspector of metalliferous does not have to hold that ticket. But he is an automatic member of the board. We do not believe people understand the changes they were making by putting in those words.[48]

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44 Department of Natural Resources and Mines, correspondence 29 September 2017, p. 6.

45 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 33.

46 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 33.

47 See: Submission 6 and Submission 7.

48 Mr Dallison, CFMEU, public hearing transcript, Brisbane, 25 September 2017, p 22.

The department noted that:

> *…there is merit in including in the Act a requirement that, in addition to the provisions in the Bill, there must always be among the BOE's inspectorate membership at least one holder of a first-class certificate of competency in coal mining and at least one holder of a first-class certificate in metalliferous mining.*
>
> *However, the department does not consider that the Act need require that the chief inspector hold a first-class certificate of competency that corresponds to the type of mining their appointment relates to.*[49]

Committee comment:

The committee accepts that there will be circumstances in which CMSHAC or MSHAC may benefited from the appointment of additional members with technical and operational expertise. However, given the evidence to this inquiry, the committee does not support the Minister's discretionary power to appoint a person to CMSHAC or MSHAC that is not technically qualified or does not have the required coal mining operations experience.

Recommendation 2

The committee recommends that in his second reading speech the Minister outline the reasons for the proposed amendments to the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* which will provide the Minister discretionary power to appoint a person to the Coal Mining Safety and Health Advisory Committee or the Mining Safety and Health Advisory Committee, even if the person does not have the required 'coal mining operations' experience.

The committee believes that the removal of s 186(4) will weaken the integrity of the BOEs and therefore the mine safety and health framework and as such recommends that the Bill be amended.

Recommendation 3

The committee recommends the Bill be amended to ensure that the Chief Inspector (under the *Coal Mining Safety and Health Act 1999*) and the Chief Inspector of Mines (under the *Mining and Quarrying Safety and Health Act 1999*) hold, at a minimum, a First Class Certificate of Competency in the corresponding type of mining for which they are the Chief Inspector.

2.4 Safety and health management system (SHMS) requirements

The *Mining and Quarrying Safety and Health Act 1999* specifically identifies the provision of a SHMS at mines to manage risk and outline the obligations of an operator and site senior executive (SSE) to develop and implement a single SHMS for all persons at the mine.

Under the MQSHR, the SHMS must include:

- procedures for reporting accidents and high potential incidents (section 14)
- procedures for documenting the techniques that must be used for investigating accidents (section 15)
- an emergency response plan; (section 35)
- controlling risk arising out of personal fatigue; (section 89), and
- isolating, locking-out and tagging plant (section 107).

[49] Department of Natural Resources and Mines, correspondence 29 September 2017, p 5.

The committee heard from the CFMEU that the union supported the amendments but had identified potential issues in the Bill as drafted:

> *The changes for the contractor management, we believe, are good. It puts obligations on the SSE and it spells it out more as to what they should be. Currently, the SSE has obligations to put that in place. There is a piece under the legislation that says that he cannot defer his obligations to someone else, but he could have someone else do that work on his behalf. Now, it is trying to say that one of those people—whomever looks after the contractors—will share that obligation and it will have to be mentioned in the management structure. Currently, there is a safety manager that does all of the documentation that the SSE has to do. They are not mentioned. There are the training people who have to train all the people and make sure that the training schemes are in place for labour hire and contractors. They are not mentioned. We have put in some proposed changes through our submission to say what we believe those sections should be. Although we agree with some of those sections, we do not believe that they go far enough.*[50]

In response the department noted that:

> *There has been no shift from the wording in the current section 62(2) in relation to this matter which may include a level of ambiguity. However, the department considers that ambiguity can be avoided by omitting the word "that" after "forms part of an overall management system" and inserting the word "and".*[51]

Committee comment

The committee supports efforts to remove ambiguity from the legislation and commends the department for working with stakeholders to resolve identified and potential issues.

2.5 Continuing professional development

Under CMSHA and MQSHA, certificates issued for competency do not expire, nor do they require any form of continuing professional development (CPD). The Bill seeks to introduce practising certificates based on CPD by holders of certificates of competency (i.e. statutory position holders) and align the current legislation with other jurisdictions.

The Bill will allow for CPD requirements to be introduced by regulation. CPD requirements may also be extended to SSE notice holders.[52]

The committee notes that the MMAA supports the introduction of the requirement for continuous professional development and for all statutory officials to hold practising certificates:

> *On continuing professional development, as we have laid out in our written submission, our association has been committed to continuing development for many years and for the last 14 years has had a fully operational web based CPD program in place. Our only reservation with respect to the introduction of a CPD scheme and the attendant introduction of practising certificates in Queensland is that they must be compatible with New South Wales. Any major variation may well be the unintended consequence of restricting the free movement of statutory officials between states and, given the paucity of qualified persons, that could severely limit operation at some mines.*[53]

The department noted that the amendments proposed in the Bill will enable CPD requirements to be introduced into regulation and the proposed requirements for the CPD, including aspects of other

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50 Mr Dallison, CFMEU, public hearing transcript, Brisbane, 25 September 2017, p 21.

51 Department of Natural Resources and Mines, correspondence 29 September 2017, p 6.

52 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 13.

53 Mr Taylor, MMAA, public hearing transcript, Brisbane, 25 September 2017, p 26.

existing schemes, such as New South Wales, will be considered through the development of the regulation provisions.[54] At the departmental briefing the committee were told:

> *The intent is to align with the framework that exists in other major mining states, particularly New South Wales, which is the other state with a significant underground coal industry as well as Western Australia, but more in terms of the metalliferous mines in that state. As I mentioned in my opening address, that will provide for the better mobility of ventilation officers with those particular skills. If they have a certificate of competency, that is recognised with reciprocal arrangements across those jurisdictions. It is the equivalent of the board of examiners in Queensland issuing a competency in one of those other jurisdictions that is recognised in Queensland. It is very much about having consistency across the major mining jurisdictions in Australia.*[55]

Committee comment

The committee supports requirements for CPD and the need to ensure that this is harmonised to other existing schemes such as New South Wales. The committee commends the department for working to incorporate stakeholder feedback to recognise reciprocal arrangements across jurisdictions.

2.6 Penalties

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

The explanatory notes argue that civil penalties are considered necessary to provide for action to be taken to address non-compliance. Where a corporation is prosecuted criminally in respect of the same conduct, a civil penalty may not be imposed unless the proceeding ends without the corporation being convicted or found guilty.[56]

The provision prescribes three categories of civil offences (categories 1, 2 or 3) based on the safety and health risk to persons at the mine. The following civil penalties will apply:

- 1,000 penalty units for category 1
- 750 penalty units for category 2
- 500 penalty units for category 3.[57]

The provision also provides that corporations who are mine operators or contractors would be liable where a representative such as an officer, employee or agent fails to comply with certain obligations or requirements under the CMSHA or MQSHA.[58]

Inclusion of civil penalties will be in subordinate legislation.[59]

The QRC raised concerns that the amendments in relation to civil penalties may result in 'double jeopardy':

> *I think the issue is more that a civil penalty cannot be issued after a conviction for the corresponding offence, but there is nothing to prevent a prosecution following a civil penalty. That is the issue that we are talking about in terms of double jeopardy. The whole issue around civil penalties is that there has been very limited consultation. It is a very significant change. We*

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54 Department of Natural Resources and Mines, correspondence 29 September 2017, p 9.

55 Mr Hinrichsen, DNRM, public briefing transcript, Brisbane 25 September 2017, p 4.

56 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 14.

57 Penalties based on the value of $126.15 per penalty unit (effective as at 1 July 2017).

58 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 14.

59 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 19.

are talking about an important compliance framework ranging from education and awareness through to prosecutions and then civil penalties are now popping out at the end close to prosecution with the potential to impose substantial fines and, in some case, even more than the prosecutions deliver.[60]

In response the department noted:

A civil penalty will not be imposed after any criminal proceedings. There may be instances where it may be necessary for criminal proceedings to commence after a civil penalty is imposed, however this would be subject to the existing considerations in determining whether to commence proceedings i.e. a matter is in the public interest etc. If a civil penalty was imposed, this would be a matter that would be considered in determining whether to commence a proceeding. Natural justice will be afforded to a company prior to a decision being made to impose a civil penalty.[61]

The QRC also raised concerns regarding the proposal to increase penalties and argued that the Bill introduces a system of administrative fines that are inappropriate in the context of potentially serious concerns about mining safety and health.[62] The QRC stated:

The QRC also believes that this proposal provides an example where an alignment with the WH&S Act is being selectively made. The WH&S Act provides for civil penalties, but under a very different framework than what is proposed in the Bill.

The WH&S Act identifies a range of administrative non-compliances as being "civil penalty provisions", for which proceedings may be taken in a Magistrates Court under the rules of evidence and procedure for civil proceedings. The maximum penalty for breaching a civil penalty provision under the WH&S Act Is 100 PU ($10,000) compared to the proposed maximum of 1000 PU ($126,150) in the Bill.

This is a very high penalty for contravening an administrative process, particularly when compared to the size of penalties that have been imposed by courts following prosecutions for serious breaches of the mining safety legislation.[63]

In response to this matter the department noted:

Civil penalties are necessary in mining Acts to provide for action to be taken to address non-compliance and would be adopted where a breach requires direct redress. For example where a company fails to fulfil an obligation or requirement that has the potential to significantly impact the safety and health of persons at a mine, such as respirable dust management. The penalties have been determined to be commensurate with the safety and health risk the contravention poses.[64]

Committee comment

The committee notes the concerns of the QRC that there was limited industry consultation[65] in regard to penalties and that this may result in:

… introducing a tiered system of categories of obligations and associated civil penalties [which possibly] creates the perception that not complying with any obligation under the relevant Act

60 Ms Bertram, QRC, public hearing transcript, Brisbane, 25 September 2017, p 11.

61 Department of Natural Resources and Mines, correspondence 29 September 2017, p 11.

62 QRC, Submission 9, p 3.

63 QRC, Submission 9, p 5.

64 Department of Natural Resources and Mines, correspondence 29 September 2017, p 11.

65 QRC, Submission 9, p 3.

> *will be able to be addressed by paying an administrative fee, and that doing so is simply a cost of doing business.*[66]

However, the committee is satisfied that the high financial penalties proposed in the Bill will act as a deterrent to possible non-compliance. As the Minister argued:

> *It is proposed that the chief executive will be able to impose civil penalties of up to 1,000 penalty units, or $126,000, against corporations who are mine operators or contractor companies and who fail to comply with certain obligations or requirements under the mining safety legislation. These two types of penalties will deter negligent decision-making which potentially results in serious injury or death.*[67]

[66] QRC, Submission 9, p 4.

[67] Hon Dr Lynham MP, Minister for State Development and Minister for Natural Resources and Mines, Record of Proceedings, 7 September 2017, p 2810.

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, and
- 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 House.

3.1.1 Rights and liberties of individuals - Section 4(2)(a) Legislative Standards Act 1992

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 Disclosure of information

Clauses 46 and 89

Clause 46 amends section 275A (Disclosure of information) of the *Coal Mining Safety and Health Act 1999*. Clause 89 amends section 255 (Disclosure of information) of the *Mining and Quarrying Safety and Health Act 1999* in the same way as clause 46.

New section 275A(2A) and section 255(2A) (respectively) provide that the chief inspector or chief executive may disclose to the Regulator or WorkCover, under the *Workers' Compensation and Rehabilitation Act 2003*, any information the chief inspector or chief executive has that relates to any matter under that Act.

Potential FLP issues

In allowing for the potential disclosure of an individual's confidential information, clauses 46 and 89 may breach the fundamental legislative principle that legislation have sufficient regard to the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

The explanatory notes acknowledge the potential FLP breach and provide the following justification:

> *While this is an abrogation of a person's right to keep personal and confidential information about a person private, this amendment is justified for a thorough investigation to be undertaken for matters related to the administration of these Acts.*[68]

Committee comment

The committee notes that the amendments will allow for an individual's confidential information to be provided to the Regulator or Workcover by the chief inspector or chief executive in relation to 'any matter' under both the CMSHA and the MQSHA.

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

[68] Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 18.

Clauses 29 and 76

Clause 29 inserts a new section 193A into the CSMHA.

Section 193A(1) provides that the board of examiners must keep a register of certificates of competency granted by the board; site senior executive notices issued by the board; and notices of registration given by the board. Pursuant to section 193A(3), the board of examiners may disclose information in the register, other than the contact details of an individual, to any person or agency.

Clause 76 amends section 185 of the MQSHA in the same terms that the CSMHA is amended by clause 29. New section 185(1) requires a register of certificates and section 185(3) provides that board of examiners may disclose information in the register, other than the contact details of an individual, to any person or agency.

Potential FLP issues

Clauses 29 and 76 will allow for the personal information of individuals contained in a register to be published. This potentially breaches section 4(2)(a) of the *Legislative Standards Act 1992*, which provides that legislation have sufficient regard to the rights and liberties of individuals.

The explanatory notes acknowledge the potential FLP breach and provide the following justification:

> *These amendments to establish the register result in a potential infringement of the fundamental legislative principle under section 4(2)(a) of the LSA. This is because the board could publish information contained in the register. Some of the information to be published may be personal information under the Information Privacy Act 2009 (e.g. a person's name). However, the amendment specifically prevents the Board from publishing other private information such as personal contact details.*
>
> *Currently, any agency, mine operator or other person wanting to confirm that a person is the holder of a valid certificate, notice or letter requires either the consent of the holder or alternatively may request access to the information under the Right to Information Act 2009.*
>
> *The current approach is not only administratively arduous, particularly for employers seeking to confirm the qualifications of candidates for safety critical roles; it also detracts from promoting transparency in the mining industry.*
>
> *While other agencies provide online public access to such information (e.g. Electrical licence holder search), there is currently no provision under Queensland's mining safety laws for the similar disclosure of a person's mining competency status.*
>
> *The potential breach of fundamental legislative principles associated with the establishment of this public register is considered to be justified given that significant public-interest benefits associated with the establishment of the register.*[69]

Committee comment

The committee notes the justification provided in that the provisions will allow for greater transparency of the mining industry and the ability to confirm the qualifications of persons for important mining roles. The provision does provide a safeguard in that an individual's contact details cannot be published.

Given the justification provided, the committee considers that sufficient regard has been given to fundamental legislative principles in this instance.

69 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 18.

3.1.2 Power to enter premises – Section 4(3)(e) *Legislative Standards Act 1992*

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

Clause 24 inserts new section 138A (Entry to residential premises) into the CMSHA.

Section 138 provides that an inspector may only enter a residential place with the consent of the person with the management or control of the place or under the authority conferred by a search warrant. An inspector may enter a suspected workplace if the officer reasonably believes no reasonable alternative access is available and at a reasonable time having regard to the times at which the officer believes work is being carried out at the place to which access is sought.

Similarly, clauses 70 and 71 insert new sections 133(1)(e) and 135A into the MQSHA, providing the same provisions that clauses 23 and 24 insert into the CMSHA.

Potential FLP issues

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

In providing a discretionary power to an officer to enter premises without a warrant, the aforementioned sections potentially breach section 4(3)(e) of the *Legislative Standards Act 1992* which provides that legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The OQPC Notebook provides that this principle supports a long established rule of common law that protects the property of citizens. Power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate. Strict adherence to the principle may not be required if the premises are business premises operating under a licence or premises of a public authority. The OQPC Notebook states, 'FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals'.[70] Residential premises should not be entered except with consent or under a warrant or in the most exceptional circumstances.[71]

The explanatory notes acknowledge the potential FLP breach and provide the following justification:

> *The amendments adopt a similar approach to entry to places to that provided for inspectors under the Queensland Work Health and Safety Act 2011. An inspector, an inspection officer or an authorised officer may enter a place that the inspector, inspection officer or authorised officer is or reasonably suspects is a workplace.*
>
> *This furthers the public interest to ensure that mines inspectors, inspection officers and authorised officers have access to all workplaces that may affect safety and health at mines.*[72]

Committee comment

The committee notes the greater discretionary powers afforded to an officer to enter a place pursuant to the aforementioned clauses. It is presumed that an officer would have the necessary experience to exercise this discretion when determining whether to enter a place or not.

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70 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 45.

71 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 46.

72 Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 19.

The committee notes the justification provided in the explanatory notes that access to all workplaces that may affect mine safety and health is necessary and in the public interest.

3.1.3 Immunity from proceedings – Section 4(3)(h) Legislative Standards Act 1992

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

Section 275AC(1) is amended to enable information to be released about accidents or high potential incidents as well as any incident or other matter that may be relevant for a person seeking to comply with health and safety obligations.

Section 275AC(4)-(6) provides that no liability is incurred by the State for anything done in good faith for the purpose of issuing a public statement; by a person for publishing in good faith information that has been included in a public statement under the section; and that liability includes liability in defamation.

Clause 88 provides the same provisions as clause 45 in amending section 254C of the MQSHA, including protections from liability at section 254C(4)-(6).

Potential FLP issues

Clauses 45 and 88 broaden the matters that the Minister, chief executive, commissioner or chief inspector may make public statements about. The clauses also provide immunity for the State for anything done in good faith for the purpose of issuing a public statement. Further, immunity is provided for a person who publishes any information in a public statement in good faith.

Section 4(3)(h) of the *Legislative Standards Act 1992* provides that legislation should not confer immunity from proceeding or prosecution without adequate justification. The OQPC Notebook states that a person who commits a wrong when acting without authority should not be granted immunity. Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for action done honestly and without negligence and if liability is removed it is usually shifted to the State.[73]

The explanatory notes acknowledge the potential FLP and provide the following justification:

> *These provisions are considered justified because the proactive release of safety information through a public statement made by the Minister, chief executive, commissioner or chief inspector is imperative to minimising and or avoiding risk of injury or fatality of workers in the resources industry. It is essential that learnings following an accident or an investigation are communicated to the resources industry within a reasonable timeframe to ensure that workers are aware of any identified risks, and that the appropriate mechanisms are in place for the workers' protection. The existing sections provide that a public statement must not be issued unless it is in the public interest to do so.*
>
> *In addition, the immunity from liability is justified to ensure that safety information can be communicated through the issuing of a public statement without the fear of legal proceedings being instituted. The protection applies to the State for anything done in good faith for the purpose of issuing a public statement. It also applies to a person who publishes, in good faith, information that has been included in a public statement.*
>
> *The immunity from liability is necessary for the effective release of information about incidents or other safety and health matters at the earliest stage possible, and in order for the Minister, chief executive, commissioner or chief inspector to be able to carry out their statutory safety and*

[73] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 64.

health functions and not be reluctant to act through concerns about potential personal legal liability. The amendments are similar to the provision covering the publication of information by the regulator enacted by New South Wales in the Work Health and Safety (Mines and Petroleum Sites) Act 2013.[74]

Committee comment

The committee notes that immunity applies to public statements made and published in good faith. The information to be communicated will most likely be in the public interest in order to advise the public of an incident as quickly as possible to ensure safety. In light of the justification provided, the committee considers that sufficient regard has been given to fundamental legislative principles in this instance.

3.2 Proposed new and amended offence provisions

Clause	Offence	Proposed maximum penalty
5	**Amendment of *Coal Mining Safety and Health Act 1999*** **Replacement of s34 Discharge of obligations** A person on whom a safety and health obligation is imposed must discharge the obligation. Maximum penalty—	
	(a) if the contravention caused multiple deaths—	
	(i) for an offence committed by a corporation; or	30,000 penalty units
	(ii) for an offence committed by an officer of a corporation; or	6,000 penalty units or 3 years imprisonment
	(iii) otherwise; or	3,000 penalty units or 3 years imprisonment
	(b) if the contravention caused death or grievous bodily harm—	
	(i) for an offence committed by a corporation; or	15,000 penalty units
	(ii) for an offence committed by an officer of a corporation; or	3,000 penalty units or 2 years imprisonment
	(iii) otherwise; or	1,500 penalty units or 2 years imprisonment
	(c) if the contravention caused bodily harm—	
	(i) for an offence committed by a corporation; or	7,500 penalty units

[74] Mines Legislation (Resources Safety) Amendment Bill 2017, explanatory notes, p 20.

	(ii) for an offence committed by an officer of a corporation; or	1,500 penalty units or 1 year's imprisonment
	(iii) otherwise; or	750 penalty units or 1 year's imprisonment
	(d) if the contravention involved exposure to a substance that is likely to cause death or grievous bodily harm—	5,000 penalty units
	(i) for an offence committed by a corporation—; or	
	(ii) for an offence committed by an officer of a corporation; or	1,000 penalty units or 1 year's imprisonment
	(iii) otherwise; or	500 penalty units or 1 year's imprisonment
	(e) otherwise—	
	(i) for an offence committed by a corporation; or	5,000 penalty units
	(ii) for an offence committed by an officer of a corporation; or	1,000 penalty units or 6 months imprisonment
	(iii) otherwise.	500 penalty units or 6 months imprisonment
14	**Amendment of s54 Appointment of site senior executive** (3A) A coal mine operator must not appoint a person to be site senior executive for a coal mine or a separate part of a surface mine unless the person holds a site senior executive notice.	500 penalty units
16	**Replacement of s61 Appointment of ventilation officer** (1) This section applies to an underground mine. (2) The underground mine manager for the mine must appoint a person as the ventilation officer for the mine. (3) However, the underground mine manager may be appointed as the ventilation officer for the mine by the site senior executive.	200 penalty units
16	(4) The underground mine manager or site senior executive must not appoint a person as the ventilation officer for the mine unless the person holds a ventilation officer's certificate of competency.	200 penalty units

16	(5) Subject to the direction and control of the underground mine manager, the ventilation officer for the mine is responsible for— (a) the implementation of the mine's ventilation system; and (b) the establishment of effective standards of ventilation for the mine. (6) The underground mine manager or site senior executive must not appoint a person as ventilation officer at more than 1 mine at the same time unless the chief inspector gives the manager notice that the chief inspector is satisfied the person can effectively carry out the duties of the ventilation officer at the mines.	200 penalty units
16	**Insertion of new s61A Absence of ventilation officer** (1) This section applies if the ventilation officer appointed under section 61 for an underground mine is— (a) temporarily absent from duty; and (b) is a person other than the underground mine manager for the mine. (2) If the absence is for not more than 7 days, the duties and responsibilities of the ventilation officer are taken to be assumed by the underground mine manager during the absence. (3) Subsection (2) applies regardless of whether the underground mine manager holds a ventilation officer's certificate of competency. (4) An inspector may, by notice, require an underground mine manager assuming the duties and responsibilities of the ventilation officer to— (a) demonstrate to the inspector's satisfaction that the manager can effectively carry out the duties and responsibilities of both the underground mine manager and the ventilation officer; and (b) if the underground mine manager can not satisfy the inspector as mentioned in paragraph (a)—appoint a person to act as the ventilation officer during the remainder of the absence. (5) If the absence is for more than 7 days or the underground mine manager is given a notice under subsection (4)(b), the underground mine manager for the mine must appoint a person to act as the ventilation officer during the absence.	200 penalty units
16	(6) The underground mine manager must not appoint a person under subsection (5) unless the person holds a ventilation officer's certificate of competency.	200 penalty units

35	**Amendment of s198 Notice of accidents, incidents, deaths or diseases** (7) A person prescribed by regulation who becomes aware that a coal mine worker has been diagnosed with a reportable disease must give notice of the diagnosis to the chief inspector. (8) In this section— ***reportable disease*** means a disease prescribed by regulation to be a disease that must be reported under this section.	40 penalty units
44	**Insertion of new s267F Liability for civil penalties** (1) A relevant corporation is liable to pay the State a civil penalty if— (a) the relevant corporation contravenes a civil penalty obligation; or (b) a representative of the relevant corporation contravenes a civil penalty obligation. (2) A civil penalty may be imposed on the relevant corporation by a penalty notice given to the corporation by the chief executive. (3) The amount of the penalty is— (a) if the civil penalty obligation is a category 1 obligation; or (b) if the civil penalty obligation is a category 2 obligation; or (c) if the civil penalty obligation is a category 3 obligation. (4) For subsection (3), the category of a civil penalty obligation is the category prescribed by regulation for the obligation. (5) In this section— ***representative,*** of a relevant corporation, means an officer, employee or agent of the corporation.	1,000 penalty units 750 penalty units 500 penalty units
53	**Replacement of s31 (Discharge of obligations)** A person on whom a safety and health obligation is imposed must discharge the obligation. Maximum penalty— (a) if the contravention caused multiple deaths— (i) for an offence committed by a corporation; or (ii) for an offence committed by an officer of a corporation; or (iii) otherwise; or	30,000 penalty units 6,000 penalty units or 3 years imprisonment 3,000 penalty units or 3 years imprisonment

	(b) if the contravention caused death or grievous bodily harm—	
	(i) for an offence committed by a corporation; or	15,000 penalty units
	(ii) for an offence committed by an officer of a corporation; or	3,000 penalty units or 2 years imprisonment
	(iii) otherwise—; or	1,500 penalty units or 2 years imprisonment
	(c) if the contravention caused bodily harm—	
	(i) for an offence committed by a corporation; or	7,500 penalty units
	(ii) for an offence committed by an officer of a corporation; or	1,500 penalty units or 1 year's imprisonment
	(iii) otherwise; or	750 penalty units or 1 year's imprisonment
	(d) if the contravention involved exposure to a substance that is likely to cause death or grievous bodily harm—	5,000 penalty units
	(i) for an offence committed by a corporation—; or	
	(ii) for an offence committed by an officer of a corporation; or	1,000 penalty units or 1 year's imprisonment
	(iii) otherwise; or	500 penalty units or 1 year's imprisonment
	(e) otherwise—	
	(i) for an offence committed by a corporation; or	5,000 penalty units
	(ii) for an offence committed by an officer of a corporation; or	1,000 penalty units or 6 months imprisonment
	(iii) otherwise.	500 penalty units or 6 months imprisonment
63	**Amendment of s49 Appointment of site senior executive** *insert—* (3A) If more than 10 workers are employed at a mine or the mine is prescribed by regulation to be a mine to which this subsection applies, an operator for the mine must not appoint a person to be site senior executive for the mine, or a separate part of the mine, unless the person holds a site senior executive notice.	500 penalty units

	(3B) A regulation may prescribe a mine to be a mine to which subsection (4) applies because of the size, nature or complexities of the mine's operations.	
65	**Insertion of new s54A Appointment of ventilation officer** (1) This section applies to an underground mine. (2) The site senior executive for the mine must appoint a person as the ventilation officer for the mine.	200 penalty units
65	(3) The site senior executive must not appoint a person as the ventilation officer for the mine unless— (a) if more than 10 persons but not more than 20 persons work underground in the mine or the mine is prescribed by regulation to be a mine to which this paragraph applies—the site senior executive is satisfied the person is competent to perform the duties of the ventilation officer for the mine; or (b) if more than 20 persons work underground in the mine or the mine is prescribed by regulation to be a mine to which this paragraph applies—the person has competencies recognised by the committee as appropriate for the duties and responsibilities of the position. (4) A regulation may prescribe an underground mine to be a mine to which subsection (3)(a) or (b) applies because of the size, nature or complexities of the mine's operations.	200 penalty units
65	(5) The ventilation officer for the mine is responsible for— (a) the implementation of the mine's ventilation system; and (b) the establishment of effective standards of ventilation for the mine. (6) The site senior executive must not appoint a person as ventilation officer at more than 1 mine at the same time unless the chief inspector gives the site senior executive notice that the chief inspector is satisfied the person can effectively carry out the duties of the ventilation officer at the mines.	200 penalty units
65	**Insertion of new s54B Absence of ventilation officer** (1) This section applies if the ventilation officer appointed under section 54A for an underground mine is temporarily absent from duty. (2) If the absence is for not more than 14 days, the duties and responsibilities of the ventilation officer are taken to be assumed by the underground mine manager during the absence. (3) Subsection (2) applies regardless of whether the underground mine manager satisfies any requirements that apply under	

	section 54A(3)(a) or (b) for appointing a person as the ventilation officer for the mine. (4) An inspector may, by notice— (a) require an underground mine manager assuming the duties and responsibilities of the ventilation officer to demonstrate to the inspector's satisfaction that the manager can effectively carry out the duties and responsibilities of both the underground mine manager and the ventilation officer; and (b) if the underground mine manager can not satisfy the inspector as mentioned in paragraph (a)—require the site senior executive for the mine to appoint a person to act as the ventilation officer during the remainder of the absence. (5) If the absence is for more than 14 days or the site senior executive is given a notice under subsection (4)(b), the site senior executive for the mine must appoint a person to act as the ventilation officer during the absence.	200 penalty units
65	(6) The site senior executive must not appoint a person under subsection (5) unless the person satisfies any requirements that apply under section 54A(3)(a) or (b) for appointing a person as the ventilation officer for the mine.	200 penalty units
78	**Amendment of s195 Notice of accidents, incidents, deaths or diseases** (7) A person prescribed by regulation who becomes aware that a worker has been diagnosed with a reportable disease must give notice of the diagnosis to the chief inspector. (8) In this section— ***reportable disease*** means a disease prescribed by regulation to be a disease that must be reported under this section.	40 penalty units
87	**Insertion of new s246F Liability for civil penalties** (1) A relevant corporation is liable to pay the State a civil penalty if— (a) the relevant corporation contravenes a civil penalty obligation; or (b) a representative of the relevant corporation contravenes a civil penalty obligation. (2) A civil penalty may be imposed on the relevant corporation by a penalty notice given to the corporation by the chief executive. (3) The amount of the penalty is— (a) if the civil penalty obligation is a category 1 obligation; or (b) if the civil penalty obligation is a category 2 obligation; or	1,000 penalty units 750 penalty units

	(c) if the civil penalty obligation is a category 3 obligation. (4) For subsection (3), the category of a civil penalty obligation is the category prescribed by regulation for the obligation. (5) In this section— ***representative***, of a relevant corporation, means an officer, employee or agent of the corporation.	500 penalty units

3.3 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Committee comment

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

Appendix A – List of submissions

Sub #	Submitter
001	B McCarthy
002	M Smalley
003	Mine Managers Association of Australia
004	Queensland Nurses Midwives Union
005	Cement Concrete & Aggregates Australia
006	Board of Examiners
007	CFMEU
008	Board of Examiners (2)
009	Queensland Resources Council

Appendix B – List of witnesses at public departmental briefing

Department of Natural Resources and Mines

- Mr Lyall Hinrichsen, Acting Executive Director, Mineral and Energy Resources Policy
- Mr Robert Djukic, Director, Compliance and Regulatory Policy

Appendix C – List of witnesses at public hearing

Commissioner for Mine Safety and Health

- Mrs Kate du Preez

Queensland Resources Council (QRC)

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

CFMEU – Mining and Energy Division

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

Mine Managers Association of Australia (MMAA)

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

Department of Natural Resources and Mines

- Mr Lyall Hinrichsen, Acting Executive Director, Mineral and Energy Resources Policy
- Mr Robert Djukic, Director, Compliance and Regulatory Policy
- Mr Mark Stone, Executive Director, Mine Safety and Health

Statement of Reservation