



INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE

Members present:

Mr DA Pegg MP (Acting Chair)
Mrs LE Donaldson MP
Mr S Knuth MP
Mrs AM Leahy MP
Mr AJ Perrett MP

Staff present:

Dr J Dewar (Committee Secretary)
Ms L Pretty (Assistant Committee Secretary)

PUBLIC BRIEFING—INQUIRY INTO THE EXPOSURE DRAFT OF THE MINES SAFETY AND HEALTH AUTHORITY BILL 2017

TRANSCRIPT OF PROCEEDINGS

MONDAY, 4 SEPTEMBER 2017

Brisbane

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Committee met at 11.58 am

ACTING CHAIR: Good morning. I declare open the public briefing for the exposure draft of the Mine Safety and Health Authority Bill 2017. Thank you for your attendance here today. I am Duncan Pegg, the member for Stretton. I am substituting for Mr Jim Pearce, the member for Mirani, so I am the acting chair of the committee for this inquiry. The other committee members here with me today are Ms Ann Leahy, Deputy Chair and member for Warrego; Mr Tony Perrett, the member for Gympie; and Ms Leanne Donaldson, the member for Bundaberg, who is substituting for Mr Craig Crawford, the member for Barron River.

The committee's proceedings are proceedings of the Queensland Parliament and are subject to the standing rules and orders of the parliament. Witnesses should be guided by schedules 3 and 8 of the standing orders. Those here today should note that these proceedings are being broadcast to the web and transcribed by Hansard. Media may be present, so you may also be filmed or photographed. Before we commence, I ask everyone to switch off their mobile devices or put them on silent mode.

I now welcome Mr Ben McMillan.

McMILLAN, Mr Ben, Counsel Assisting, Coal Workers' Pneumoconiosis Select Committee

ACTING CHAIR: Mr McMillan, I invite you to make an opening statement, after which I am sure committee members will have some questions for you.

Mr McMillan: Thank you for your invitation to be here today. As I indicated, I was appointed by the Clerk of the Parliament to assist the Coal Workers' Pneumoconiosis Select Committee as counsel assisting. I practise as a barrister at law in private practice at the Queensland bar. Since my appointment in September, my function in that role has been generally to assist the committee to understand its terms of references and provide legal advice as to how it might achieve those terms of reference. More importantly, I have served as counsel assisting in the course of examining witnesses who appeared before the Coal Workers' Pneumoconiosis Select Committee and was involved heavily in the drafting of report No. 2, the *Black lung white lies* report, tabled on 29 May. I have had a subsequent role with that committee in the development of the draft bill for consultation that was attached to report No. 3. I suspect that is the reason why I have been nominated to be here today to answer your questions.

I do not speak for the committee. The committee's intention is set out in the report. To the extent that I can, I will answer any questions that you might have about the reasons the particular clauses have been proposed in the draft bill. It is important to recognise at this stage that the draft bill that was prepared is intended to be a consultation draft. It was expected by the committee that a range of stakeholders would wish to contribute their views about the provisions—provisions that should be included that have not been and provisions that have been included that they think ought not be. It was never intended by the committee that this should be the final iteration of the bill. That is important to recognise as we approach a discussion of the provisions that have been included.

At this stage, other than going over all of the recommendations, it is probably worthwhile me noting that the bill that is attached to report No. 3 essentially enacts, or it proposes to enact, responses to 18 of the recommendations that were in report No. 2, *Black lung white lies*. Members will be aware that there were 68 recommendations in that report. Most of the recommendations in that report will be affected, if they are ultimately affected, by amendment to regulation and policy as it is implemented by the various departments, principally the Department of Natural Resources and Mines. Only a small amount of the overall recommendations require legislative amendment. Obviously, the centrepiece of those recommendations is the recommendation for the establishment of a mine safety and health authority which, of course, requires its own piece of legislation. That is the genesis, I think, of the draft bill for consultation. I am happy to answer any of your questions.

ACTING CHAIR: Thank you very much, Mr McMillan. I have some questions about the membership and functions of the board. For the benefit of the committee, could explain the role of the two independent persons and their expected contribution to the board? Also, could you tell the committee what the benefits would be of allowing a board member to be appointed on a part-time basis? How do you think that provision would affect the makeup of the board?

Mr McMillan: If I can take the second part of the question first, it is intended that all of the board members will be appointed by the Governor in Council under the usual arrangements for appointments to government boards. The reason they can be appointed on a part-time basis is to ensure that they receive remuneration for their contribution to the board. It has been identified in the hearings that the Coal Workers' Pneumoconiosis Select Committee has had that there have been some difficulties with attendance and contribution to the advisory committees, because they are not remunerated positions. The coal workers' committee considered that it was important that there be a professional element to appointment to the board and that those members be remunerated appropriately. That is the reason that the provisions for them to be appointed part-time and remunerated are there.

In terms of the independent members, you will see that the board, to a large extent, reflects the composition of the advisory committees that are established under the Coal Mining Safety and Health Act and the Mining and Quarrying Safety and Health Act, but the coal workers' committee considered, obviously, that one of the key recommendations in relation to this authority is that it be truly independent from government and from the Department of Natural Resources and Mines. That is the reason that the proposal was to include on the board two persons entirely independent of the industry and of government. I note also that the model for the board is taken largely from the model adopted in New South Wales for the Coal Services board. That board requires representation by two persons independent of the coalmining industry in New South Wales.

ACTING CHAIR: I have a further question in relation to the appointment for the commissioner for mine safety and health. I note that clauses 31 and 36 of the draft bill set out the terms of appointment. Are those terms based on a standard model? If so, what model and on what basis are those provisions made up?

Mr McMillan: The terms for appointment—and I will be corrected if I am wrong—are taken almost without amendment from the current provisions in the Coal Mining Safety and Health Act. Certainly the provisions about the qualifications of the commissioner are taken directly from that act and have not been amended. The requirement for the appointment of the commissioner by the Governor in Council is, in the existing act, on the recommendation of the minister. Indeed, I think the only distinction from the current requirement is the removal of the ability of the commissioner to hold an existing Public Service office. Under the current arrangements in the coal act, the commissioner may be also a senior public servant within the Department of Natural Resources and Mines and that allowance has been removed, consistent with the recommendation that that role be truly independent.

Ms LEAHY: Thank you very much, Mr McMillan, for coming in today to join this committee. The thrust of this piece of legislation is to set up a truly independent entity.

Mr McMillan: Yes.

Ms LEAHY: Can you inform the committee as to why that is important and the reasoning behind having a truly independent body?

Mr McMillan: The *Black lung white lies* report goes into significant detail about the failings that were identified by the Coal Workers' Pneumoconiosis Select Committee in the administration of the regulatory scheme by the Department of Natural Resource and Mines over 30 years or more. It is described in that report as a catastrophic failure at almost every level of regulation to protect the health and safety of coalminers.

I should note at this stage that the *Black lung white lies* report was on the committee's initial terms of reference. Those terms of reference were very specifically focussed upon coal. Therefore, the recommendations are also focused upon coal and the draft bill is focused significantly upon coal. That committee has extended terms of reference that will look at other issues. However, to the extent that the current recommendations are focused upon coal, that is the reasoning.

The failures that were identified by the Coal Workers' Pneumoconiosis Select Committee in terms of regulation that are set out in the report indicate a significant degree of failure in the department to properly and independently regulate the industry in terms both of the relationship between the inspectorates and industry and between senior officers of the department and industry. That was the primary basis for the recognition that there needs to be an independent body that oversees regulation of the mining industry.

The Coal Workers' Pneumoconiosis Select Committee also took evidence from Coal Services in New South Wales and extensive evidence from regulators in the United States, including the mine safety and health administration there, about the benefits of having an independent body regulate health and safety in the mining industries. That is the rationale for the requirement for an independent body that is separate from the department.

Ms LEAHY: The exposure draft talks about the authority's principal office being located in Mackay. Were there any concerns in relation to finding suitably qualified officials, including a commissioner, to be based in Mackay?

Mr McMillan: That is not something that the coal workers' committee has received specific evidence about. There was no evidence gathered or reported in the report about the likelihood or otherwise of suitable candidates being willing to apply for positions in Mackay. I cannot take that any further than that.

Ms DONALDSON: Mr McMillan, clause 11(1)(f) enables the authority to maintain a database of dust management techniques and technologies. Do you think the provision is wide enough to capture other engineer monitoring data or health surveillance associated not only with coalmines but also other mines and quarries, for example, gas management, ventilation, et cetera?

Mr McMillan: Probably not. That provision's reference to dust management techniques is a specific reference to the recommendation in the report that the authority develop such a database. The evidence before the coal workers' committee is that the Department of Natural Resources and Mines has already commenced that project, but that ultimately the recommendation of the coal workers' committee was that that database should be housed within the new independent authority. The functions of the authority set out in clause 11 are intended to be inclusive, not exclusive. Certainly the authority will have other functions that are not listed there. However, in terms of consideration of the provisions, I do not see that there is any difficulty at all with a suggestion of other functions that should be expressly provided for in that functions section of the act. To answer your question directly, I do not think it does adequately provide for all sorts of other databases. It is specifically directed towards implementing the recommendation in the *Black lung white lies* report.

Ms DONALDSON: Again in relation to clause 11 and clause 12, which relate to the functions and powers of the authority under the act, can you elaborate on what other functions or powers might be given to the authority? Do you have any thoughts on the legislation?

Mr McMillan: If this bill were enacted and the authority is established by that act, it is intended that the mining inspectorates that are currently housed within the Department of Natural Resources and Mines would be relocated into the authority. That was expressly recommended by the committee in its report No. 2. There would be a range of other functions that are attached to those inspectorates that have not been expressly discussed in those clauses that would transfer to the authority. The mining inspectorates have a whole range of functions other than pure inspections, including assisting and facilitating mine operators with implementing proper safety and health management systems, et cetera. They provide guidance and advice around occupational hygiene services and that kind of things, as well.

Additionally, and this is probably more a machinery-of-government change, the committee recommended that the bulk of the functions that are currently performed by Simtars, the Safety in Mines Testing and Research Station, will be transferred to the authority. They have a very wide scope of functions at the moment, including testing and certification of equipment. The Mines Rescue division is located within Simtars. They do a whole range of explosive testing, explosibility testing around underground mining equipment, et cetera. All of those functions it is expected, I think, under the recommendations would transfer into the authority, as well. There is a reference to that in clause 11(1)(d)—

To provide research, testing, certification, engineering, scientific and training services that ensure health and safety outcomes for the Queensland mining and resource industry

Those words are taken from the current functions of Simtars. The only exception to that, it is intended, would be the commercial occupational hygiene services currently provided by Simtars. The coal workers' committee recommended that those be discontinued, as the committee recommended they were inconsistent with the independent nature of that authority.

Mr PERRETT: I want to touch on the departmental failings identified by the select committee in respect to the existing regulations and what is proposed in new bill. Are those failings systemic and what is the history of those? What provisions in this bill will overturn those problems, if they are systemic, so that we never experience such a situation again?

Mr McMillan: I am reluctant to paraphrase the report. A great deal of attention was given by the committee members to the precise words of the report. I am reluctant to paraphrase them so that they can be then repeated as my words rather than the committee's words. They are set out in detail in the report. However, it is certainly clear on the basis of the report itself that the committee found that they were systemic failings within the Department of Natural Resources and Mines, particularly, and that an entirely new independent structure was needed to remedy those problems.

The committee report made it clear that blame was not to be attributed to any one minister, director-general or officer but that it was a widespread systemic failure to properly identify the risk of respirable dust and manage it. That is the basis for the recommendations that have been made. I do not know whether that has fully answered your question.

Mr PERRETT: That is fine. I just want to be sure through this process that we understand the issues that have led to it, particularly as the committee is going to report back to the parliament on this bill, and whether there could be some push back from certain areas or perhaps rejection of what is proposed given that it is a significant change to the structure that has been in place that has managed these sorts of things previously.

Mr McMillan: I cannot speak to whether there will be push back or not. You will of course be aware that the Coal Workers' Pneumoconiosis Select Committee has already received a number of submissions from parties that no doubt will make submissions to your committee as well that have expressed views both to the coal workers' committee and no doubt will express views to you about those recommendations and the need or otherwise for an independent authority.

In terms of the structure itself, obviously the board that is proposed to manage the authority is an entirely new structure. That is an oversight function that has been recommended by the coal workers' committee as necessary, recognising that senior people appointed to a government board to oversee an independent body gives a level of independence and should give the public a level of confidence in that authority.

The role of the commissioner is existing within current legislation. If the bill is enacted, that role will be given statutory level of independence similar, for example, to the Health Ombudsman under the Health Ombudsman Act. The structures that are new—namely, the board and its composition—have been modelled on other similar independent statutory authorities.

In terms of the officers who sit below that senior executive and board level, most of them are likely to be employed by the Department of Natural Resources and Mines now and one would think in the machinery-of-government process would be transitioned across into the new authority. There is certainly no intention on the part of the Coal Workers' Pneumoconiosis Select Committee to lose the institutional knowledge that exists within the department already. They are very experienced occupational hygienists, inspectors, certification officers, engineers and so on. To those who have concern that this is intended to be a clean out of everyone in the department and a whole bunch of new people—they would rightly be concerned, I think, that there will be a loss of institutional knowledge—that is certainly not proposed in the legislation that that occur. The new structures that are proposed are essentially oversight structures that manage the work that goes on beneath them.

Mr PERRETT: I would like to touch on a couple of other matters dealing with the new structure. With regard to the appointment of the CEO at clause 46(2), what are the avenues available to the minister if the parliamentary committee is unable to achieve bipartisan support for a nomination?

Mr McMillan: Those provisions—you might recognise them—are almost identical to the provision in the Crime and Corruption Act for the appointment of commissioners of the CCC and, indeed, the chairman of the CCC. I cannot tell you, as in I do not know the answer to that question as to what options are available to the minister if the committee cannot agree. They are modelled on those provisions deliberately to reflect the level of independence of that authority comparable with the Crime and Corruption Commission. The members of the coal workers' committee many times in the course of hearings and in the regional briefings specifically made reference to the CCC and its level of independence from government as a model for this authority. I apologise; I cannot answer that. I do not know.

ACTING CHAIR: I have some questions about the Mine Safety and Health Fund. Could you outline some details in relation to the Mine Safety and Health Fund? Also, if it is possible, are you able to provide the committee with an estimated percentage of the royalties that would fund the fees and expenses relating to the administration and enforcement of the authority's functions and powers? Has there been any work done as to how much that will all cost?

Mr McMillan: The clauses in the bill relating to the Mine Safety and Health Fund, which are at part 9 of the consultation draft, emerge from two recommendations of the Coal Workers' Pneumoconiosis Select Committee report No. 2. Those recommendations—Nos 17 and 18—essentially proposed that the authority be funded by a dedicated proportion of coal and mineral royalties and that that dedicated proportion should be fixed by regulation and periodically reviewed by the committee. It was intended in those recommendations that there be a consultation process and that there would need to be extensive analysis of the proposed cost of the authority before any fixed proportion was set. The reason that it was proposed in the recommendation that it be fixed by regulation was so that the proportion could be adjusted more easily than if it were set in the legislation. That is why you will see in the draft clauses in the bill, particularly at clause 70, that it is established that the amounts paid into the fund would be established by regulation. That work has not yet been done. I cannot answer that question because the work has not yet been done in terms of the regulation as to what that figure would be.

ACTING CHAIR: I had a question in relation to clause 60, which is the ministerial direction. Could you inform the committee how this provision would operate and can you give some examples of how a minister may give a direction in the public interest and what kinds of things might be in the public interest?

Mr McMillan: The clause is modelled upon the provision that is in the Police Service Administration Act, which allows the Minister for Police to direct the Police Commissioner in certain circumstances. That is the most obvious example I can think of immediately. It recognises the independence of the commissioner role but that there will be some circumstances in which the minister of the Crown needs to obtain information, for example, or in the public interest needs to direct that a particular thing be done. So long as there is full transparency around that direction which is achieved by that direction being published and gazetted in the way that is prescribed in the clause, it is recognised that you need to provide for that eventuality. The way to ensure that that independence is maintained is by giving transparency around it.

Ms LEAHY: I want to go back to clause 34 and also clause 15 in relation to the board members and their appointment. How much consultation would be foreseen between the minister and the parliamentary committee before making those decisions about appointments?

Mr McMillan: There are provisions in both the Coal Mining Safety and Health Act and the Mining and Quarrying Safety and Health Act at the moment in terms of how the minister should determine appointments to the advisory committees. They would be a guide, I think, to how the minister would go about gathering names that are ultimately proposed, but there is no prescription in the bill about how the minister should do that.

Ms LEAHY: Is it envisaged that perhaps the minister should be providing the list of the prospective appointments not just the nominee for commissioner or a member position?

Mr McMillan: That would be no doubt a matter for the committee to determine. If they were presented with a list of proposed appointments that they could not achieve bipartisan agreement on, one would think that the committee may well request access to the other persons who were considered for nomination.

Ms LEAHY: What mechanism is there if the government refuses the parliamentary committee that information? Is there any mechanism to resolve that?

Mr McMillan: The mechanism that is provided is that the committee that oversees this authority has all of the powers of a parliamentary committee to require the production of information including information of that kind.

Ms LEAHY: What was envisaged exactly by 'bipartisan' support of that committee that oversees this authority?

Mr McMillan: No, I cannot answer that.

Ms LEAHY: Was there any indication given whether it would be an agreement between government and non-government or a majority of the parliamentary committee?

Mr McMillan: The committee must be constituted by three members nominated by the Leader of the House and three members nominated by the Leader of the Opposition. I had taken it that bipartisan agreement would require agreement from all six of those members essentially.

Ms LEAHY: It would be from all six; it is not just by a majority vote.

Mr McMillan: I am hesitant—I am concerned that I might have strayed beyond my remit. That was the way I had interpreted the provision. I had not considered that there was any lack of clarity in the provision. To the extent that you have drawn my attention to that, all I can do is offer to take that on notice. If the coal workers' committee are able to provide any greater clarity to you, we will certainly do that.

Ms LEAHY: I would be very appreciative if you would take that on notice and provide that advice to this committee. I think that would be very helpful.

Mr McMillan: I will.

Ms DONALDSON: Regarding clause 30 on the disclosure of interests, given that the board is made up of representatives from key stakeholders which would include people who represent operators of coalmines, do you anticipate that there may be times when some members of the board may be excluded from votes or discussions? If that is the case, how would the board undertake its role and ensure that there is a quorum to make decisions?

Mr McMillan: It was deliberately intended that the board members will have active roles in the industry, apart from the two independent members, of course. That is absolutely essential to the proper administration of the authority under the structure that is proposed. The requirement for those members to disclose those interests in any given situation is a standard corporate governance mechanism so that all of the other board members understand the basis upon which members are making decisions. In any other context, and in this context if it is enacted, the board would ultimately determine upon the disclosure of a potential conflict whether that member is in fact conflicted and, if they are, whether they ought be excluded from the determination of the issue.

One can imagine all sorts of examples where a board member is conflicted and ought be excluded—for example, if the board is considering a particular issue in relation to a particular mine site and the board member is an executive of the company that operates that site or, indeed, if the board member is a union official who routinely attends that site in their capacity as a union official. There are numerous other examples where they might have a connection that does not exclude them from proper determination of the issue before the board. In every other context that I can think of, including across government boards, it is for the board to determine that on a case-by-case basis.

The reason that there is more than one person appointed from each of the proposed categories of appointment to the board is partly to deal with the issue of one of those persons being excluded because of an actual conflict so that there would be another representative of a metalliferous mine operator, for example, who is present for the deliberation. There was also a specific intention to allow the board to create subcommittees of the board to deal specifically with, for example, coal mining issues. That reflects the existing legislation around the advisory committees for coal and a separate committee for metalliferous mines inquiries.

Mr KNUTH: In regard to the Mine Safety and Health Authority for Queensland exposure draft bill—and obviously the select committee played a big part in drafting this bill—what are the reasons why it could not be drafted by the department of natural resources? Why did it have to come from the select committee?

Mr McMillan: I do not know that that is for me to answer, Mr Knuth. I think the easiest way for me to deal with the question is to acknowledge that the House, without opposition, authorised the select committee to prepare a draft bill for the consideration of the Assembly. I do not know if it is for me to give an opinion as to why that occurred. A motion was moved in the House and it was passed without opposition.

Mr KNUTH: Thank you.

Mr McMillan: I do not mean to be evasive, but I do not want to speak for others.

Ms LEAHY: Mr McMillan, clause 42 sets out the commissioner's functions. Can you elaborate on the commissioner's powers to 'start and conduct proceedings for an offence against a mine and safety law'?

Mr McMillan: I can. In each of the two mining acts—and I should be clear that when we are discussing this issue there are probably three relevant acts including the Petroleum and Gas (Production and Safety) Act. Petroleum and gas was beyond the terms of reference of the committee's initial inquiry, but one might think that petroleum and gas probably should be included in the authority if it is ultimately enacted. It is not considered in the report because it went beyond the terms of reference, and that is something no doubt that those interested parties who make submissions to you will make submissions about.

When I refer to the two acts that the coal workers committee have looked at specifically under their terms of reference, I mean the Coal Mining Safety and Health Act and the Mining and Quarrying Safety and Health Act. In each of those acts and, indeed, in the petroleum and gas act, offences are established for various things including breaches of safety and health obligations, failure to produce documents when required and so on.

In each of those acts a person or number of people is designated as being given authority to commence proceedings under those acts. In each of them the commissioner as defined is identified as a person who is authorised to commence prosecutions. In the current suite of legislation, 'commissioner' is defined as the commissioner as established under the Coal Mining Safety and Health Act. You will see that there is a clause at the back of the bill in the transitional provisions that changes that definition in the two acts to which I have referred to make reference to the commissioner as established under this bill. It is intended that the offence provisions that exist wherever they exist in each act that allow the commissioner as defined to commence proceedings will mean the commissioner established under the Mine Safety and Health Authority Bill. The powers properly to prosecute are enacted in whatever legislation creates the offence. That is the proper way to structure the legislation so that when a person is looking at the legislation and sees a clause that creates an offence they need to know how that offence is prosecuted in most cases.

In each of those acts the commissioner is granted that power. There are others who are given the power as well. I think in both acts the chief executive of the department is authorised to commence proceedings as well. The practice within the Department of Natural Resources and Mines currently, as I understand it, is that the commissioner solely exercises that power and there is no need to delegate because, while the chief executive has expressly been given that power, the chief executive does not exercise the power as far as I know, but you may wish to direct that question specifically to the representatives of that department when they appear before you.

The functions of the commissioner are in running prosecutions. It is intended, again, that they would be run independently through the authority rather than through the department and the functions would include all of the usual functions of a complainant in a criminal proceeding including the determination as to how they present evidence, whether they continue with the prosecution in certain circumstances—for example, where a person offers to remedy the breach in some way. There are some situations where persons accused of offences make submissions to prosecuting authorities as to why proceedings should not be continued, and it is intended that the commissioner would be the person who ultimately considers those types of submissions and makes decisions. As I understand it, that is the current arrangement within the department.

ACTING CHAIR: There being no further questions, we will close this session. Mr McMillan, the committee would appreciate if the answers to any questions taken on notice could be provided by close of business on Monday, 11 September 2017. I thank you for your attendance today at today's briefing into matters relating to the Mine Safety and Health Authority Bill 2017. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare the briefing closed.

Committee adjourned at 12.35 pm