COAL WORKERS’ PNEUMOCONIOSIS
SELECT COMMITTEE

Members present:
Mrs JR Miller MP (Chair)
Mr JN Costigan MP
Mr CD Crawford MP
Mr JP Kelly MP
Mr S Knuth MP
Hon. LJ Springborg MP

Member in attendance:
Mr J Pearce MP

Counsel assisting:
Mr B McMillan (Barrister at Law)

Staff present:
Dr J Dewar (Research Director)
Ms K Shalder (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO COAL WORKERS’ PNEUMOCONIOSIS

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 2 NOVEMBER 2016
Brisbane
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Committee met at 11.02 am

CHAIR: Good morning, everyone. I declare open the public hearing of the coal workers’ pneumoconiosis inquiry. Thank you for your attendance today. I am chair of the Coal Workers’ Pneumoconiosis Select Committee, and I am also the member for Bundamba. The other committee members here with me are Mr Lawrence Springborg MP, member for Southern Downs and deputy chair; Mr Craig Crawford MP, member for Barron River; Mr Joe Kelly MP, member for Greenslopes; Mr Jason Costigan MP, member for Whitsunday; and Mr Shane Knuth MP, member for Dalrymple. We also have with us today Mr Jimmy Pearce, the member for Mirani, who has approval from the committee to be at these public hearings.

Those here today should note that the hearing is being broadcast and transcribed by Hansard and that media may be present so you may be filmed or photographed. Before we commence, I ask that all mobile devices be switched off or turned to silent. For the benefit of Hansard, I ask that the witnesses please state their name and position when they first speak and to speak clearly into the microphone. The committee notes that the commissioner is accompanied and supported by a legal adviser today. These proceedings are similar to parliament and are subject to the Legislative Assembly’s standing orders and rules. The guide for appearing as a witness before a committee has been provided to those appearing today. The committee will also observe schedules 3 and 8 of the standing orders. Today between 11 am and 1 pm we have the Commissioner for Mine Safety and Health.

DU PREEZ, Mrs Kate, Commissioner for Mine Safety and Health, Department of Natural Resources and Mines

CHAIR: I welcome the Commissioner for Mine Safety and Health. I would like to invite you to make an opening statement after which committee members may have some questions for you.

Mrs du Preez: Good morning. Thank you for allowing me to address the committee today. My name is Kate du Preez. In June 2016 I was appointed as a part-time Commissioner for Mine Safety and Health providing advice—

CHAIR: Kate, we are finding it difficult to hear. I am going to adjourn for a few minutes until we get the technical people here. We are relying on this being broadcast, and if we are finding it difficult to hear you from our end obviously the viewers will find it difficult as well. We will adjourn for a few minutes.

Proceedings suspended from 11.05 am to 11.08 am

CHAIR: The committee is now back in session. My understanding is that the internet volume is okay. Hansard is okay to be able to transcribe your evidence. It is just this particular room and they are working on that now so we will resume. Maybe you can speak a little louder for the benefit of the committee. Can you start again?

Mrs du Preez: Thank you very much. I will speak a bit louder, and at any time please just indicate and I will raise my voice more.

Thank you for allowing me to address the committee today. My name is Kate du Preez. In June 2016 I was appointed as a part-time Commissioner for Mine Safety and Health providing advice directly to the minister. I believe that I am the first total independent Commissioner for Mine Safety and Health in Queensland. This is a departure from the way the role previously operated. My predecessors were also officers within the Department of Natural Resources and Mines. As such, they were also accountable for and managed the Queensland Mines Inspectorate. I do not hold a position within the mines department, nor do I have any managerial role with regard to the inspectorate staff. I hold a Bachelor of Science in Mining Engineering with Honours. I started my career working underground specialising in coal, working my way up from the grassroots all the way up to manager level. I was the first woman in South Africa to attain a South African mine manager’s certificate of competency in coal mining. I come to the role with more than 16 years hands-on international experience in mining.
The role of Commissioner for Mine Safety and Health was created in 2009 following a recommendation from the Queensland Ombudsman as part of its review of the Queensland Mines Inspectorate. In a nutshell, my role is to provide advice. As such, I advise the minister on safety and health matters generally. I chair both the Coal Mining Safety and Health Advisory Committee, which is often referred to as CMSHAC, and the Mining Safety and Health Advisory Committee, MSHAC, and monitor and report to the minister and to parliament on the administration of provisions about safety and health under mining legislation.

While I have no operational or managerial functions, I do have powers which include to recommend prosecutions and to take out injunctions. In my role I also chair the Coal Mining Safety and Health Advisory Committee and the Mining Safety and Health Advisory Committee. Members include representation from the Mines Inspectorate, mineworkers and mine operators. Our collective role is to make recommendations to the Minister for Natural Resources and Mines on the safety and health of persons at mine inquiries.

Since 2009 the commissioner has reported annually to parliament on the performance of the Mines Inspectorate. The committees must review mining inquiry legislation and recognised standards and risk management controls in mines. When reviewing the effectiveness of the mine safety and health legislation, the matters that the committee must consider include risk management performance; appropriateness of recognised standards; education, training and competency standards within the industry; implementation of recommendations from investigations conducted by the mine inspector, the coroner, boards or inquiries or other sources; and promotion of community knowledge and awareness of safety and health. Safety and health advisory committees reports have been published annually since 2001. I see my role as providing support to ensure every Queensland mineworker goes home safe and healthy every day.

I turn specifically to the issue at hand, CWP. When I was appointed as the commissioner in June, seven coal workers had already been diagnosed with CWP. We have now had our 16th case confirmed. Within my first month, a final report of the Review of respiratory component of the Coal Mine Workers’ Health Scheme, Monash University’s expert examination, also known as the Monash report, was provided to the minister. With seven CWP incidents already established at the time of my appointment and numbers rapidly increasing, as commissioner my immediate response was to work out the best possible actions to assist. As such, I oversaw the committee approval of changes to the coalmining health and safety regulations and recognised standards; visited operations in Queensland; consulted widely with inspectors, mine operators and unions; visited other jurisdictions; and, recognising the wider perspective of my role, oversaw the development and guidelines for respirable crystalline silica. The new health and safety regulations prescribe notifiable occupation diseases in coal and metalliferous mines, clarify coalmine worker health assessment requirements, introduce volunteer respiratory and chest X-ray examinations for retiring coalmine workers, and strengthen respirable dust management requirements.

I have made a priority as commissioner to seek solutions from as many sources as possible. For example, I have taken government, union and industry representatives to New South Wales to examine firsthand how the state goes about monitoring and managing dust and how its coal workers health scheme operates. I am also working with the inspectorate, Simtars, which the department’s research, testing and training facility, and others to gain an understanding of best practice monitoring and control. The committee has also been working with the inspectorate to address priority issues raised in the Monash report.

There are currently two draft standards being finalised for the minister’s approval in conjunction with the Coal Mining Safety and Health Advisory Council. One standard deals with dust monitoring and the other dust management in coalmines. The regulations and the two recognised standards are expected to be in force from 1 January 2017.

As I mentioned, my priority was to broaden the scope of potential dangers to include silica and as such offer better safety provisions. There will always be threats and hazards associated with the mining industry. Our focus and priorities identify and negate them. To reiterate, I see my role as providing support to ensure that every one of the 39,797 people working in mining in Queensland goes home safe and healthy every day. Thank you for listening.

CHAIR: Thank you very much. We are going to open up to questions. Given your evidence that you claim to be an independent officer, we have here the organisational chart of the Department of Natural Resources and Mines. It has your position and your name reporting to the director-general.

Mrs du Preez: Yes, that is actually a mistake. I advise only to the minister. If you have a look in the act as well that is my role. I advise to the minister.
CHAIR: The organisational chart that we have been provided with by the department is in fact wrong?

Mrs du Preez: Yes.

CHAIR: It is wrong?

Mrs du Preez: Yes.

CHAIR: Thank you for clearing that up. As commissioner do you ever advise the director-general of any issues?

Mrs du Preez: As I obviously work with his inspectorate quite often I would tell him my advice as well as to the minister. I would also inform the DG if I have seen something that I feel might be a risk.

CHAIR: Just so we can get the process correct, when you provide advice to the minister do you provide that advice direct to the minister or do you provide it through the director-general or do you, as a courtesy, give the director-general a copy of that advice?

Mrs du Preez: I provide my advice directly to the minister. I also provide the advice from the advisory committees directly to the minister. This is agreed advice from the committees. Out of courtesy, once I advise the minister and give that to him I also do give a copy to the director-general.

CHAIR: Has the director-general at any time asked you to alter your advice to the minister?

Mrs du Preez: No.

CHAIR: Has he discussed the advice that you have given to the minister on any occasion since you have been in this role?

Mrs du Preez: No, because I always give it to him after I have given it to the minister.

CHAIR: Can you tell me why this position is so important that is only 0.5 of a position? With all the commissioners that we have throughout Queensland—we have a commissioner for police, we have a commissioner for corrective services, we have a commissioner for fire service and other commissioners—why is this particular position only 0.5?

Mrs du Preez: This position was originally made 0.5 because, as I stated previously in my statement, it was a dual role. I am the first person who has not had a managerial role in the inspectorate. Therefore, it was a commissioner plus a DG. Due to that, it was assumed that they only needed a commissioner for 0.5.

CHAIR: So do you actually work full time in another position or have other duties?

Mrs du Preez: No, currently I am only the commissioner.

CHAIR: What days of the week do you work?

Mrs du Preez: At the moment it is very dependent on the requirement of the role when I am needed. Currently, I am working more than 0.5.

CHAIR: What days of the week are they?

Mrs du Preez: I am working Monday, Tuesday, Wednesday and Thursday and Friday if need be. I am often on the mines on a Thursday and Friday.

CHAIR: So you are actually almost working full time even though you are paid as 0.5?

Mrs du Preez: That is pretty correct, yes.

CHAIR: Can you provide the committee with the organisational chart showing any officers who work for you or can you give us those details?

Mrs du Preez: When I started in June because it was a new role as an independent officer there was no budget or no organisational structure that was set out. Since I have been in the role I now have Geoff Beare who is my direct liaison. His is a full-time position. He is also the secretary of my advisory committees. Currently we are busy putting a proposal together for administration support.

CHAIR: Can you tell me how many full-time officers actually support your role?

Mrs du Preez: Currently one.

CHAIR: You are joking.

Mrs du Preez: No.

CHAIR: What administrative support do you have at the moment?
Mrs du Preez: Currently, I have administrative support that is provided by the department. It is basically PA normal support for things like ordering stationary. At the moment I have some PA support which is basically administration support from the department.

CHAIR: We have, just to make this clear, your role as a commissioner technically at 0.5, we have one full-time officer who is with us here today and we have no other permanent officers who actually assist you in your role, is that correct?

Mrs du Preez: That is correct.

CHAIR: I will now pass to the deputy chair for questions.

Mr SPRINGBORG: Welcome to your new role. I have a couple of questions principally around the issue of your role as an independent officer advising the minister. Is that actually established independently in statute or is that under another act? The Chief Health Officer is an independent statutory role. The Ombudsman, the Health Ombudsman and a range of other people actually have independent statutory recognition that sets them aside. What are the provisions around that? Are you subject to any of the reporting requirements and discipline of the Public Service Act that would apply to those other officers who are not independent statutory officers?

Mrs du Preez: First of all, my appointment is definitely under the act. It is under 73(a), appointment of the commissioner. The independence of it came out of the Ombudsman’s report.

CHAIR: I think we need to flesh that out a bit further. Obviously the position was advertised. Can you tell us what the equivalent level for this role is in the Public Service? Is it an SO role or an SES role? We are trying to establish how senior the position is?

Mrs du Preez: It is an SES role.

CHAIR: An SES what? There are four levels of SES?

Mrs du Preez: SES high three.

Mr SPRINGBORG: This role has very specific statutory independence that sets it aside, equivalent to other independent statutory officers in Queensland? You are not subject the sorts of directions that public servants who are not independent statutory officers would be otherwise subject to?

Mrs du Preez: If you have a look at my appointment you will see that I am actually under the Public Service Act 2008 but my function is to advise the minister as an independent person.

Mr SPRINGBORG: Your role has total statutory independent recognition?

CHAIR: For the benefit of the commissioner, quite often in statutory roles where you are appointed under an act as well as under the Public Service Act you actually get a separate letter from maybe the director-general or the minister that actually appoints you in that statutory role. I understand that your legal counsel is nodding. Those of us from the Public Service understand that. We just want to know whether you have a separate letter from the minister appointing you?

Mrs du Preez: Yes, I have a letter from the minister appointing me and it was put into the Government Gazette. I am afraid I am not sure if I am answering your question correctly, in which case may I take it on notice to make sure I answer it correctly.

CHAIR: Would you be able to provide us with the letter from the minister that gives you the statutory authority of appointment to undertake this role that you have been appointed to by the Public Service Act?

Mrs du Preez: I will. The rest, I am afraid, I will take on notice, if that is okay?

Mr SPRINGBORG: That is fine. Your role is very extensive and significant. It is obviously far more important given the issue with CWP that we have been pursuing in this committee. The chair fleshed out a moment ago the roles and the demand on your time. I am just looking at the sorts of things that you look at which are under the precursor roles that you have taken over—establishing, recognising and publishing competencies; the various councils that exist that you oversee; risk management performance of industry; the appropriateness of recognised standards and education and training standards and competency within the industry.

From your observations of what you have seen since you have become the commissioner, what have been the failings and what extra resources need to be put in to ensure that all of those sorts of things that you are responsible for and more are able to be done competently? At our first hearing we heard from the department. It has now been admitted in the answers that will be available later on that there had not been the work done around the proper assessment, compilation and reporting of health and safety matters that should have gone before the department. What role do
you have within your restricted resources in making sure that you can do all of those things you are required to do and ensure the proper health and safety role of the department in these areas which you have a direct linkage to are being done properly?

Mrs du Preez: Let me understand correctly. The role that you were outlining is the role of the advisory committee not the role of the commissioner. That is the role of the advisory committee.

Mr SPRINGBORG: But do you—

Mrs du Preez: I chair that advisory committee.

Mr SPRINGBORG: You chair that. Obviously in chairing it you have a responsibility to make sure that all of those sorts of things are being done right and done to the standard that is expected?

Mrs du Preez: That is correct, but it is not only my responsibility but also the responsibility of the advisory committee. It is made up of members from industry, from the operations, from the unions and from the inspectorate. We are very clear about what our role is towards industry. Although I chair it, it is the responsibility of that committee. We have a look at competency et cetera. In terms of the history, since I have only started in June my primary focus, in the short time since being appointed as commissioner, has been to look forward and for basically me and the advisory committee to best address the recent issues that we are currently faced with.

Mr SPRINGBORG: Have you identified any particular failings within that that need your real intervention, advocacy and steering? Quite obviously there have been significant failings in this area over a number of years?

Mrs du Preez: Yes. The first thing is that the implementation of the regulations and the standards is absolutely crucial. The second thing is that we do realise that the Monash report has identified some issues that need to be implemented. The third thing is that a communication needs to go out because I think we have lost—from talking to the union and going to the operations we have definitely lost some confidence among the workforce. Those are the factors that need to be worked on right now.

CHAIR: Can you explain that further? You have just given evidence that there has been a loss of confidence in the workforce. Can you expand on that please?

Mrs du Preez: Yes. As I stated upfront, one of my roles that I see is to go and visit underground and also, being an independent person, I communicate with all three sectors of the industry. When the Monash report came out, especially with regard to the screening, there has been a concern obviously addressed by certain aspects of the industry.

Mr SPRINGBORG: I note that the Commissioner for Mine Safety and Health: Queensland Mines Inspectorate annual performance report 2015-16 states—

Early detection of coal mine dust lung disease and intervention is essential. A worker with the early stages of CWP may have no symptoms ...

We have heard evidence from the department that there were express obligations under the Coal Mining Safety and Health Regulation 2001 to keep workers’ exposure to respirable dust at an acceptable level. Yet we are now hearing that the Coal Mining Safety and Health Advisory Committee is finalising development of recognised standards for dust control. We are hearing that some 15 years after the regulation came in. Maybe the regulation has been slightly amended over that time but it was very clear. Why has there been this extraordinary deficiency between what was required in statute or regulation and we are only now getting around to this? Can you shed any light on this?

Mrs du Preez: No. I cannot shed any light because I do not have all of the facts to shed any light on what has happened in the last 15 years. As I have stated, my focus from when I have come in is to make sure that we correct the situation right now.

Mr SPRINGBORG: Do you also have a role and responsibility either directly, indirectly or just advising the minister of your concerns about the department and its receipt, assessment, reporting and proper compilation of the documents that it is required to keep and assess with regard to injury and illness around coal workers in Queensland?

Mrs du Preez: Can you clarify the question?

Mr SPRINGBORG: The critically important thing in identifying problems is not only monitoring, potentially real-time monitoring, but what happens with that information which has been collected around health and safety issues regarding coal workers and how that is then reported to and assessed by the department in accordance with their guidelines. They have a responsibility to receive and assess information around disease and injury. Then, of course, that is supposed to act as a sentinel to ensure that appropriate steps are taken to address any concerns whether they be new rules or new regulations or address any concerns around the operation of a mine.
Mrs du Preez: I assume you are asking about their medical records?

Mr SPRINGBORG: Yes.

Mrs du Preez: One of the findings that has come out of the Monash report is a concern about that. As you know, to my understanding, the HSU was only a storage facility in the past. To my understanding it was only a storage facility and at no time did they ever assess any of the documentation or the medicals that came to them. Their whole role was to ensure that it was stored and that the people’s confidentiality was maintained. This has come up as a shortcoming in the Monash review. Therefore, currently the group that is working on this is providing information that goes to the advisory committee for us to review the process as to whether we can correct that.

Mr SPRINGBORG: Basically, that particular unit was a pigeon hole more or less. The information came in and got put in a pigeon hole and never got properly assessed and issues were not identified.

Mrs du Preez: My understanding is very clear. Yes, that is my understanding. It is actually written like that in the regulation. It is a storage facility.

Mr SPRINGBORG: I know it is difficult because you have just come on the scene. I understand and appreciate that. It was set up in such a way that it was really not about getting to whether there was a real issue but whether you could basically say, ‘We have received information. We have put it in a pigeon hole and therefore job done. We don’t then try to identify if there are concerns with regard to medical issues with a subject person.’

Mrs du Preez: As I said, my understanding of the HSU is that it was a storage facility and any issues that were identified were issues that were discussed between the employee and the nominated medical adviser at the time. The data that went to HSU was not examined. That is according to my understanding. That was something that has been identified in the Monash report.

Mr SPRINGBORG: Therefore, there was effectively no way of knowing from that whether this disease had been there all the way along because there was not that obligation on the HSU to report it. They just did their job, and the re-emergence or the ongoing issue of CWP was always bubbling along out there somewhere else.

Mrs du Preez: It was not their obligation to report it because it was not their role, according to my understanding. Their role at the time was a storage unit. There was not an obligation to look at anything. That was not their role in the industry. Yes, I think—

Mr SPRINGBORG: Whose obligation was it to report it?

Mrs du Preez: At the time—that is one of the changes in the regulation currently at the moment—CWP was not a notifiable disease. At the time it was between the NMA and the employee, between them.

Mr SPRINGBORG: Because of this disconnect which was established as part of various changes over a period of time, there is no real mechanism for the authorities to identify, intervene and put in place new processes and regulations to address the issue around CWP as a consequence I suppose. There is no way of picking it up.

Mrs du Preez: To be honest, I do not have any more information to say whether I agree with you or disagree with you.

Mr SPRINGBORG: I note that we are using the term ‘re-emergence’ of CWP. You have used that terminology yourself and also the department did the other day. Would it be more appropriate to not use the term ‘re-emergence’? It is re-identification because it has probably been there all the way along.

Mrs du Preez: The only information that I have at the moment is that if you have a look at the opening statements to some of the inquiries—the opening statement to the Monash report, the opening statements to some of the presentations that have been made—they all state that we have not had it for 20 or 30 years. I think it is only due to a change in our understanding at the moment. One of the things that has come up in the Monash report and has been said is that maybe we just did not pick it up in the screening. I do not have any more information to give to you.

Mr SPRINGBORG: I think it is something that we need to be very careful of because the department of industrial relations said they had been paying out and workers compensation for people with confirmed cases going back 10 years. I think there is a complete and utter disconnect there. As time goes by it will indicate that it is disingenuous to those people who have been raising concerns and probably those people who are at risk of suffering.
You have mentioned Monash and some of the regulations. What are some of the things you are looking at with regard to ensuring that mine operators fulfil their obligations and the department fulfils its obligations around assessing whether there are sentinel problems out there, particularly around the levels of dust, particularly around longwall mining, such as real-time monitoring and those sorts of things?

Mrs du Preez: There were a few questions there. From my understanding you would like to know what my impression is on how the inspectorate is managing the compliance of the—

Mr SPRINGBORG: The compliance issues, yes

Mrs du Preez: The second one is about real-time monitoring.

Mr SPRINGBORG: Yes.

Mrs du Preez: They are different issues. I will tackle the first one first. When it comes to whether the industry has been compliance, there are two things that have changed. First of all, when I started in the role I was part of one of the levels of the compliance processes that the inspectorate was doing with one of the companies. There is a documented and very transparent compliance guideline that is currently on the website that the Mines Inspectorate actually follows. I wanted to see whether they actually followed that correctly. My opinion—they took me right through the documentation and all the steps they had done, including the notes they made when it came to the surprise visits and the non-surprise visits—is that I was very impressed with the documentation. They could take me very clearly through step by step. I actually sat in on the inspectors’ meeting and observed to see whether they were applying the compliance.

When it comes to real-time monitoring, currently there is a system at the moment that is being utilised in America and in South Africa. We currently do not have that in Queensland. It is currently being tested to see whether we can get it certified. As you are well aware, I assume that Queensland has very gassy mines. Therefore, we have to ensure that we understand the limitations of this instrument to make sure that we do not increase the risk in any other way. Although there is a solution, it is still going to take time for that solution to maybe be underground providing that it does not provide another risk.

Mr SPRINGBORG: With regard to dust monitoring and the self-regulatory opportunities that are out there for mine operators in many ways, do you think that in the current system there is a real risk of underplaying or downplaying risks and observations of what is being monitored out there?

Mrs du Preez: Under the regulation there was no requirement to report exposure of exceedance of dust to the chief inspector or any inspectors. The obligation was purely on the mining companies to monitor dust and record the exposure and to investigate. However, that has all changed now. Currently longwalls and development are now required to report their dust results every quarter to the inspectorate unless the inspector feels that there is a higher risk in which case the inspectorate will now state to the company that he would like the results on whatever time frame he feels is required. The new standard that is being implemented on 1 January in 2017 clearly states the baseline of how many times, how many frequencies, how many numbers, that the mines now have to do the dust sampling to.

Mr SPRINGBORG: Under the regulation previously there was absolutely no requirement to properly monitor and report that even though there had been—

Mrs du Preez: The only time there was a requirement was if the inspector felt there was a risk. If they went to the mine and they felt there was a risk then he himself could actually ask for the mine’s results to be reported to him. In the regulation as it stands that is one of the changes, that the dust samples are now reported to the inspector.

Mr SPRINGBORG: With the inspector getting around over those years, whilst there may have been concerns on various things, there has never been enough concern elevated with regard to the levels of dust that they identified that needed that reporting?

Mrs du Preez: Currently, as I said, I do not have the information of what happened in the past. However, there have been a few areas. Inspectors will be able to give you more details of studies that they have done, but I do not have that information.

Mr SPRINGBORG: I just want to finish on the issue of the backlog. Commissioner, you have explained that there was no obligation other than to just collect information. We have information reported to us by the department that they are struggling with that backlog. Is that something that you would take an increasing role in advising the minister to ensure that resources or focus should be on that to make sure that is properly done?
Mrs du Preez: It will be something that I will be taking advice to the minister if I feel that advice is needed or whether the advisory committee feels it.

CHAIR: I want to go back to the resourcing before I move on to other members of the committee. Your position is 0.5 SES high. Your director's position is what equivalent Public Service level please?

Unidentified speaker: SO3.

CHAIR: SO3 and you have no other support, so roughly in my calculation your office is running on an annual budget of probably less than $400,000 a year. Would that be reasonable or correct?

Mrs du Preez: To be honest I cannot answer yes or no. One of the functions that I need to do—because it is an independent commission and it has never been done before; it has always been part of the department—is we now have to set up a budget and start identifying resources that we require.

CHAIR: Just on the salaries alone, Commissioner, I have worked it out that you are currently operating on roughly less than $400,000 a year. I just wanted to make the comment that given the rivers of money that have poured into the Queensland Treasury—billions of dollars over many years—for this most important commission role that you have, to be operating currently on less than $400,000 a year I think would be quite surprising to our committee members. Nevertheless, we will move on to other questions.

Mr COSTIGAN: Commissioner, good morning. I have a few questions. Given your status in your opening statement here to the committee today as a part-time commissioner, how many mine sites have you visited since taking up your appointment, and of course I am specifically referring to coalmines?

Mrs du Preez: I am just counting them. I have been underground and visited two mine sites. I have also been to two mine rescue operations as well and to competitions as well on one site. So far I have been to four mine sites already in Queensland and I have also been underground to a mine site in New South Wales.

Mr COSTIGAN: Right, so literally a handful since taking up your job.

CHAIR: I just want to follow that up. Who approves your travel in the structure?

Mrs du Preez: Currently at the moment it is just an admin thing, so the PA puts it through and it goes to the DGG.

CHAIR: The deputy director-general is the person who approves your travel which means that you do not have independence in terms of a Public Service structure? I will now go to the member for Whitsunday again.

Mr COSTIGAN: Thanks very much, Madam Chair. Commissioner du Preez, those four mine sites that you have been to, could you advise the committee which ones you have visited?

Mrs du Preez: I have been to Broadmeadow, which is in Moranbah. I have been underground at Mount Isa. I then went to Moranbah North.

CHAIR: With respect, are you referring to a coalmine in Mount Isa?

Mrs du Preez: No, I am not.

CHAIR: So it is a metalliferous mine?

Mrs du Preez: Yes, but you need to understand in my role I have—

CHAIR: Yes, but I just wanted to make it clear for our internet people online.

Mrs du Preez: No. My role is not only over coalmines, so I—

Mr COSTIGAN: Commissioner du Preez, I appreciate you clarifying your position to the chair. I did start my line of questioning in relation to the coalmining industry.

Mrs du Preez: Kestrel.

Mr COSTIGAN: If you could just start again please. Of the four mine sites that you have been to, Commissioner du Preez, could you tell us which ones they are?

Mrs du Preez: Sorry, but I just want to turn to my adviser quickly, if that is okay. Moranbah North, Broadmeadow, Kestrel.
Mr COSTIGAN: Thanks very much. In other jurisdictions, to the best of your knowledge, is your position part time also? What I am saying is do you talk to your interstate colleagues? Do they have a part-time role officially as well?

Mrs du Preez: Currently it is very different in different states and I am going to have to take that on notice.

Mr COSTIGAN: Fair enough. Why has it taken six months, or the best part of, to go looking for support staff, particularly—

Mrs du Preez: Six months?

Mr COSTIGAN: You said you had taken up your appointment in June. It is December next month, so six plus six equals 12 last time I checked. For the best part of six months we are still waiting to see some support staff to help you in your duties. Why has it taken so long, particularly given the oxygen, the publicity, the community awareness that has been out there in relation to black lung?

Mrs du Preez: First of all when I started it was only me, so I have started putting an office together. I first had to define what the role was because under the act as an independent commissioner—being separated from the department—we needed to get an understanding of what my role is and what my functions are and by—

CHAIR: I just want to interrupt there. Surely your role and functions are determined with what is in the act and what you have been appointed to in your position description.

Mrs du Preez: That is correct.

CHAIR: So why does it take five or six months for you to get your head around what your actual role and functions are?

Mrs du Preez: I do not have the information to answer that.

CHAIR: I want to follow up on that, and, member for Whitsunday, if you can just bear with me for a moment. Basically you were appointed to the role, plonked in it, given a director and nothing else. You have had no corporate services backup, and your evidence before suggested that. You may have a few hours of a PA, but you have no other independent assistance.

Mrs du Preez: I disagree with that. I have in-house legal. I have legal advice.

CHAIR: When you say ‘in-house legal’, is that departmental legal, Crown law legal?

Mrs du Preez: It is both. It depends very clearly on what the situation is.

CHAIR: If you need legal advice in your independent role as commissioner, you go to the departmental legal officers, which could be a conflict of interest?

Mrs du Preez: Currently at the moment there is a certain instance where I am being advised by in-house legals, and that is due to certain prosecutions that are current at the moment which they are running. When it comes to other incidents, it will depend on what I am looking for advice on. If it is something that is a small matter or if it is something that I feel could be a conflict of interest, then I will use an outside person.

CHAIR: So you determine yourself whether it would be a conflict of interest for you to use department of mines legal advice and they could be at the same time or officers within that legal unit also advising other areas of the department? Is that correct?

Mrs du Preez: Yes. I am aware of that. The gentleman sitting next to you was from Crown. Can I just ask you: do you believe it would be a conflict of interest that if you needed to have legal advice on any matter you use the departmental legal officers, bearing in mind that your role is independent? Have you ever used departmental legal officers?

Mrs du Preez: Yes. I just decide myself and I also have the opportunity to utilise other firms other than in-house lawyers. It all depends on the situation.

CHAIR: Okay. I now go back to the member for Whitsunday.

Mr COSTIGAN: Thanks, Madam Chair. I just have one final question, Commissioner du Preez. Given your international experience, Commissioner, in terms of your knowledge of black lung, can you comment about the prevalence of black lung in other jurisdictions, including South Africa?

Mrs du Preez: This is my opinion and this is my opinion from experience working underground. When I was working underground in South Africa it was not a risk that was highlighted in South Africa either. We were more concerned about instantaneous risks where there was methane or explosions.
Looking at New South Wales, currently at the moment they also have reported that they have not had a CWP case either. Looking at Queensland as well, if you have a look at what they believed, the industry—and when I say ‘industry’ I do not only mean the operators; I mean the workers underground, the unions, the regulators and the inspectorate—believed, like I did—and this is my personal opinion—that it was not an issue and that it was eradicated.

Mr COSTIGAN: I have no further questions for the moment.

Mr KELLY: Commissioner, what other jurisdictions or countries have you worked in the coalmining industry in?

Mrs du Preez: I have only worked in South Africa. When I was working in Namibia I was working open cut and marine.

Mr KELLY: You are highly qualified and have an academic background. Is there any academic discussion or journals that you are aware of that have looked at or discussed the issue of CWP and the fact that it is absent in Queensland? Has this been a matter of academic interest or discussion?

Mrs du Preez: Currently there have been a lot of papers produced, but it has more been papers on how we are going to combat CWP. There was a lot of discussions at the conference this year.

Mr KELLY: It is my understanding that CWP is prevalent in places like the United States and other parts of the world. Surely there is some discussion around how Queensland has achieved what it has achieved if in fact we were CWP free for 30 years.

Mrs du Preez: My understanding is that there was a paper at the time comparing the three. You need to understand that that is one of the complexities about mining—that is, every country, although we seem to be mining the same thing, has different geological qualities to our deposits. We have different mining methods and because of that we need to apply different systems that basically reduce the risks. America has a few differences compared to Queensland like we have a few differences to New South Wales.

Mr KELLY: As a person from the industry who is coming in to this mine safety role, was it surprising to you then that we had a jurisdiction that had been free of CWP for nearly 30 years?

Mrs du Preez: In my opinion and as I stated, things have definitely improved in mining. We have improved the ventilation underground. We have improved the mining. We have all had our X-rays taken, so, yes, it was a surprise.

Mr KELLY: Given that you have come into a role as a safety commissioner, we had a very long period where there was no CWP and you have come in just at the start of CWP. Have you turned your mind to how we might have achieved that very long period where there were no cases identified of people with CWP?

Mrs du Preez: As I said up-front, my focus currently at the moment is solving the problem and making sure that the committee has the correct regulations and standards and everything in place to solve the problems currently at the moment. I have looked back at a few of the reports, but I do not have a full understanding currently of what happened in the past. My focus has purely been solving the problems in the future.

Mr KELLY: Is there something that we can learn from that period where there was no CWP? Should we be looking at something that has triggered this to start occurring again? Should we accept that it was not there?

Mrs du Preez: I think one of the things that we can learn is a few of the questions that have come out of the Monash report and a few of the recommendations. That was one of my statements when I said that I started looking. We started producing the guidelines across into the quarries and metalliferous to try to mirror those guidelines to lessons that we have learned to make sure that we do not make the same mistake in that industry as well.

Mr KELLY: One of the things that strikes me as strange is in one year we had 75 cases identified. The next year we had zero, the year after that we had zero, the year after that we had zero and so on. That does not seem to me to be technically or logically possible—that with a disease of this nature that you go from 75 and fall off a cliff face to zero and never have another case again until supposedly 2015. Do you have any explanation as to how that—

Mrs du Preez: No. Currently, I have requested information, but I have no information to make any comment.
Mr KELLY: You mentioned that this is now a notifiable disease. I am a registered nurse by profession. When I think of a notifiable disease, I think generally of an infectious disease where there would be some sort of immediate public health response due to the heightened level of risk. In this context, who is notified? What triggers the notification? When a notification is made, who is notified and what does that notification trigger what action going forward?

Mrs du Preez: Because it is a notifiable disease, where the new regulations state it is a notifiable disease, there is now a requirement that your nominated medical adviser informs the department.

Mr KELLY: Right. Is the department required to do anything in that respect? Do they have to initiate contact with the Department of Natural Resources and Mines and require that an inspector goes to wherever that person has been working over the period of time that may be the subject? What action is taken then?

Mrs du Preez: Currently, I do not have that information. Can I please take that on notice to ensure that I give you the correct information?

Mr KELLY: Yes, please do. When you look at the regulations around notifiable diseases, there are a number of different types of notifiable diseases. A disease might be notifiable on confirmation of a pathology sample, or another disease might be notifiable just on suspicion, or what they might call a provisional diagnosis, because of the seriousness. Even if you are considering it, the department wants to know about it so they can prepare a response. Do you know at what point the CWP becomes a notifiable disease? Is it just on provisional diagnosis, or is it on pathology confirmation, or X-ray confirmation?

Mrs du Preez: Currently, I am going to pass that across to the department. I will give you my understanding. My understanding, currently, is at the moment the X-rays are taken by Australia. They are then going across to America, where they are read by the ILO standard. From there, they will either say there is what they suspect as a confirmation or not. It will then go to the department’s medical expert, who will then say, ‘Yes, it is a confirmation’ or not. That is my understanding and I am asking you if you can pass that across to the department.

Mr KELLY: Okay. I have some questions around resourcing. There was a question about the number of staff you have in your department. I am not going to repropose that. Is your commission and your department the only resources allocated to dealing with safety issues in Queensland by the Queensland government?

Mrs du Preez: Sorry, I lost that last part there.

Mr KELLY: Is your commission the only allocation of resources, or the use of resources for monitoring, improving, inspecting or dealing with safety in Queensland coalmines?

Mrs du Preez: No, we have the inspectorate and they are currently well resourced.

Mr KELLY: Has there been a history where they have not been well resourced?

Mrs du Preez: It was identified in the commissioner’s report in 2011-12, purely because we have very experienced people working as an inspectorate. When you have a market, which is obviously expanding, we have a competition for resources. Currently, at the moment, we do not have a problem with resourcing, but I obviously will have a concern in the future that, if we suddenly again go into maybe a boom era in mining, that risk will come.

The other risk that might occur is due to changes in the mining—for example, with automation—which is one of the things that we are looking at, which is ideal to try to move the people out of the risk zone. Currently, the levy that forms the budget for the inspectorate is worked on people working underground. If we reduce the people working underground, we reduce the levy, which might reduce the resources, but not necessarily reduce the risk.

Mr KELLY: In regard to your travel approvals, you said that you seek approval from the deputy director-general; is that correct?

Mrs du Preez: That is correct, but that is more just a purely an administration at the moment, because of the system. At no time—

Mr KELLY: At any time has the deputy director-general queried the reasons for your travel, attempted to change your travel, or refused your travel?

Mrs du Preez: No. In fact, the reason does not go down. Before I go and travel, I send just a notice out of courtesy to the minister to say, ‘I am travelling here, here, here, and here.’ It is purely an administration tick-in-the-box system. As you can imagine, working in the government, there is a
system that needs to be done. My notification of my travel and the reasons I am travelling go through
to the minister and, as you can imagine, the reason for that, because when a commissioner goes to
the site, it is normally because the minister knows that I am going.

Mr KELLY: I want to talk about dust monitoring. As I understand it, we have a system of
self-monitoring and self-reporting here in Queensland. Once the medical assessments are done by
medical officers who are engaged by private companies, will those medical officers now be caught
by the notification process that we have talked about in relation to this disease? If a person who works
in a coalmine presents with symptoms of CWP, will that doctor have to notify Queensland Health?

Mrs du Preez: Yes, according to the regulations—from my understanding, yes.

Mr KELLY: What about if WorkCover has a case, or an application for CWP where they confirm
that they will pay out for the case?

CHAIR: Commissioner, we cannot hear you here. Can you speak into the microphone?

Mrs du Preez: My apologies. My understanding, currently, is that there is a memorandum of
understanding between WorkCover and the department. That is my level of understanding and, I
think, if you could possibly pass that question to WorkCover as well?

Mr KELLY: What is your view, as a commissioner, of the process of self-reporting in terms of
dust monitoring versus, say, the system that is in place in New South Wales?

Mrs du Preez: That is a very interesting question. As I mentioned in my opening speech, one
of the things that we did as an advisory committee when I started is we took the advisory committee
down to New South Wales. When we came back, because that is obviously one of the things that
they do, we had a look to say, ‘How could it practically work with the unions and with the industry in
relation to Queensland?’ The decision that the advisory committee made was that, in our recognised
standard, we have now specifically stated the competencies and the skills that are required for people
who go down and take specific samples as well as very clear on the baseline and how frequently they
can do it. Therefore, we want the monitor sitting on the operator so that we can get the perfect result.
Therefore, as the advisory committee, we thought that was adequate.

Mr KELLY: Finally, your role, while it is newly independent, is not totally new from what I have
picked up from earlier testimony. There was another person within the department who had dual
roles. Were you given a handover? Were you assisted in the establishment of your role? You did not
just walk into an empty office and got told to sort it out? Were there systems and processes that you
picked up and created a greater degree of independence?

Mrs du Preez: Currently, due diligence, through myself—I have physically contacted previous
commissioners and I have gone and sat to understand what they have identified as the main risks
and issues within the health and safety when they were commissioners.

CHAIR: Can you name the commissioners, please?

Mrs du Preez: Stewart Bell.

CHAIR: And who else?

Mrs du Preez: Mark was acting as well.

CHAIR: Sorry?

Mrs du Preez: Stewart Bell and Mark Stone was also acting for a period.

CHAIR: Thank you.

Mr KNUTH: Have you heard any reports from the Mine Safety Inspectorate that there is much
less focus on hazard safety and safety awareness and much more focus on profits?

Mrs du Preez: No, I have not had that concern from the inspectorate, because the inspectorate
has a very definite compliance policy and they go down and inspect the mines.

Mr KNUTH: Are you aware that the training facilities have been moved off site, limiting better
education and safety awareness?

Mrs du Preez: No, I am not aware, so I cannot comment on that. My apologies.

CHAIR: Are you aware of what budget your travel comes out of within the department, please?
If the deputy director-general approves it, it is coming out of some budget. You do not have a budget,
so where does it come from?

Mrs du Preez: DDG, apparently.

CHAIR: The DDG is a position. I want to know what budget it comes out of.
Mrs du Preez: I am going to have to take that on notice, if that is okay.

CHAIR: Okay, thank you very much. Are you aware of any audit of the Mines Inspectorate over the years, or since you have been there?

Mrs du Preez: Yes, in one of my reports I mentioned one and one that I quite often refer to and that is the Ombudsman’s audit.

CHAIR: No, a mean a regular audit, like a yearly audit. Is there a yearly audit of the Mines Inspectorate?

Mrs du Preez: My understanding is that they do certain sections, yes, but that is as much information as I have.

CHAIR: Can you find out, please? Can you take that on notice?

Mrs du Preez: Yes, I will take that on notice.

CHAIR: Who, in fact, or what company, or whether it is the Auditor-General who does the auditing of the Mines Inspectorate?

Mrs du Preez: I will take that on notice.

CHAIR: I would like to know as well whether such audits come to your position or to previous holders of positions, such as Stewart Bell, and what you, or him in the predecessor role have done with that information. If you could take that on notice, please?

Mr PEARCE: I have a couple of questions that you may have to take on notice. I want to ask you about inspections at mine sites. I remind you that I have worked in the industry, so I have a pretty fair idea of how it was working when I was there. Could you tell the committee when the unannounced inspections of mines was introduced into Queensland? You may not know the answer to that.

Mrs du Preez: No, I do not. I am going to have to take that on notice, or, if you could ask the department, they will be able to answer that question for you.

Mr PEARCE: Thank you. How many regular reports—weekly, monthly, annual reports—would find their way to the desk of senior people, including yours, over a year? Would you have any idea? It is a lead-in to something else that I want to ask.

Mrs du Preez: I can give you some of my understanding of what I have received, but the rest I am going to have to take on notice to ensure that you get the proper facts.

CHAIR: Can you give us your understanding, please?

Mrs du Preez: Okay. Currently, at the moment I have a weekly meeting. I assume that you are asking for myself. I currently have a weekly meeting with the executive director-general, which is Mark Stone, of the mine safety and health. The inspectorate produces a report on an annual basis, which I receive a copy of. They also produce reports constantly, in which case you need to ask the department about that, and I get copies of that as well.

Mr PEARCE: Are you aware of any process that might be in place to ensure that there is monitoring of all aspects of workplace health and safety within the mines as reported? Is there any process where the reports are all read, looked at closely to see if there is anything that keeps coming to the notice of the department or yourself?

Mrs du Preez: I am afraid you are going to have to ask the department that one, if that is okay.

Mr PEARCE: Is there a system or a point where officers can point out, say, an area of concern to the inspectorate or to the workers, going back through their union representatives? Are there any areas in a mine that are not appropriately monitored and/or appropriately reported? Would those types of things be brought to your attention?

Mrs du Preez: I think we are mixing between two different roles here. Obviously, you have the role of the inspectorate and they have certain procedures in place where concerns are picked up by the inspectors in visits. They have a complete compliance policy. Because I am independent, there are certain channels that, if people feel that there is any risk that I need to be aware of, they notify me as well. That is not necessarily just the inspectorate, as well. I have been notified already by another member of the industry. There are the advisory committees where risks are brought to the table. That could be either looking at HPIs or something that the industry has found that has not been adequately addressed, or the unions.

Mr PEARCE: Since you have been appointed to this position, has any evidence given you an understanding of what the relationship may have been like between the inspectorate and senior management?
Mrs du Preez: On the mines or in the department?
Mr PEARCE: Senior management within the department. With the inspectorate and senior management, are you aware of any issues that might impact on the overall efficiency of the department?
Mrs du Preez: No. That is to my knowledge at the moment, but I have only been in the department for a short time.
Mr PEARCE: I appreciate that. I was trying to find out if you are aware of anything like that from the past?
Mrs du Preez: No.
Mr PEARCE: From your own experience, are you satisfied that the performance of the inspectorate in reporting and actioning particular concerns or issues is being carried out as it should be, appropriately and efficiently?
Mrs du Preez: I have only been in the department for a few months but, as I stated earlier, I have sat in on some of the directive meetings to ensure the situation and that they were following the compliance procedure. I have had a look at—in August, I went and asked for all the inspectors’ competencies, so I have a full idea of what their qualifications are and whether they are competent to do the rule. When I went underground, I was with the inspectors so I could get an appreciation and see how they were actually carrying out their roles. At the moment, to the best of my understanding, I am quite happy with what the inspectors are doing.
Mr PEARCE: If there was evidence that the inspectorate was not carrying out its work under its obligations and responsibilities and you were made aware of that, would you deal with it?
Mrs du Preez: That would be my role, to inform the minister, yes.
CHAIR: Following on from the questioning by the member for Mirani and other members, you said you had weekly meetings with the inspectorate.
Mrs du Preez: Yes, with the head. Only the head.
CHAIR: Do you have weekly meetings with check inspectors?
Mrs du Preez: Chief inspectors?
CHAIR: Check inspectors from the union.
Mrs du Preez: Currently, no. However, I do communicate with them on a regular basis and there are two behind who can testify to that.
CHAIR: How regular is regular? If you are having a standard meeting, so to speak, with the inspectorate, why don’t you also have a standard meeting with the checkies? I am wondering if you could answer that, please.
Mrs du Preez: At the moment, I have meetings with them in the advisory committee.
CHAIR: Which meets how often?
Mrs du Preez: Once every three months. I also have correspondence with them as a requirement. Whether they are putting input into something or they have identified a risk, then they correspond straight to me.
CHAIR: Wouldn’t it be appropriate that, if you are having a weekly meeting with the inspectorate, you also have a weekly meeting or a phone hook-up, or whatever it takes, with the checkies?
Mrs du Preez: Yes, I agree.
CHAIR: You agree?
Mrs du Preez: Yes.
CHAIR: Thank you very much. I now go to the member for Southern Downs.
Mr SPRINGBORG: Commissioner, earlier in one of your answers, I think it might have been to Mr Kelly, you indicated that we have all had our X-rays taken and that there had been good work done with regards to dust reduction or there had been significant progress in dust reduction. The indication that I have is that there has not been any great change and it has been quite significant numbers, I suppose. Consistently between 2006 and October this year, 97 per cent of underground workers have had chest X-rays and variously between 36 and 40 per cent or 45 per cent of above-ground coal workers. Obviously, this does not apply to all. There is still a significant tail of coal workers where those X-rays should be done.
Mrs du Preez: That is correct. Since July there have been a few changes. First of all, a person coming into the industry will have an X-ray. People working underground will have one every five years and open-cut will have one every 10 years, which has not been a requirement in the past.

Mr SPRINGBORG: Obviously that cannot be compulsory. There will be some people who may object to an X-ray, but the requirement will be that in all areas possible that X-ray should happen in accordance with ILO guidelines.

Mrs du Preez: That is correct.

Mr SPRINGBORG: What are the ILO guidelines? Are you able to assist? If not, I am happy for you to provide that on notice.

Mrs du Preez: I would actually like you to ask the medical, but from my understanding the ILO system is a recognised system where they take the chest X-rays and compare, and they are able to diagnose CWP.

Mr SPRINGBORG: Given that there seems to be a significant time for this black lung disease to manifest itself, maybe 20 or 30 years, we are probably looking at practices that have continued in the mining industry since 1984. Do you have concerns that the advent of longwall mining, which obviously has some efficiencies and some significant practicalities in the Queensland context, may have led to issues that could have manifested—I use the term so-called ‘re-emergence’ of this disease. I think it has always been bubbling away.

Mrs du Preez: Unfortunately because, as you mentioned, CWP is a disease that takes over a long time, due to the exposure of dust, yes, there are some cases out there that may not have been identified yet.

Mr SPRINGBORG: I do not know if you have a copy of your annual report and also the annual report from 2014-15. It talks about the Mines Inspectorate and staff activities for 2015-16. One of the roles is to conduct audits. I note that there were 32 audits conducted in the 2015-16 year. In the previous year, there were 70 audits. Were any of those audits into levels of dust or concerns around that?

Mrs du Preez: I am going to have to take that on notice.

Mr SPRINGBORG: I would appreciate that. Could you also provide, and maybe this needs to be on notice, why there were 38 less audits? What is the trigger point for an audit?

Mrs du Preez: Okay.

CHAIR: You will take that on notice, as well?

Mrs du Preez: Yes.

Mr SPRINGBORG: I think you were the appointed commissioner probably right at the tail end of when this annual report was compiled, to be fair. It indicates that there were 1,614 inspectorate days. Would you be able to answer how many of those inspectorate days were applied to the issue of unacceptable or concerns about dust levels? Maybe you need to take this on notice, again?

Mrs du Preez: I will take those on notice, just to make sure that you get the accurate facts.

Mr SPRINGBORG: Thank you very much. You may or may not have this information: there were 332 directives and 994 substandard practice notices issued in the 2015-16 year. Were any of those in relation to unacceptable dust levels?

Mrs du Preez: I can tell you that, since the end of 2013 up until May 2016, we have issued 23 directives according to dust. Currently, we have three mines on directive.

Mr SPRINGBORG: Three mines on directive?

Mrs du Preez: Yes.

Mr SPRINGBORG: With regards to that level of dust, what was the trigger point? How high or unacceptable was it? Obviously anything over the trigger point is unacceptable, but how elevated was it?

Mrs du Preez: No, no. The regulation clearly states what the requirement is.

Mr SPRINGBORG: Does it escalate with issues of seriousness above that and proactive monitoring and involvement from your office?

Mrs du Preez: Yes. It varies on what the risk is. It varies on what has been identified by their inspectors. It is very clearly defined in the compliancy and they will start that whole process.

Mr SPRINGBORG: Your report also indicates that there were four level 4 and 29 level 3 compliance meetings. Were any of those meetings in relation to elevated levels of dust?
Mrs du Preez: Yes.
Mr SPRINGBORG: How many of those?
Mrs du Preez: I cannot say for certain, but I know purely because I was involved in a few of them. I do not know. I will take that one on notice.
CHAIR: Can you advise us which mines, please?
Mrs du Preez: I am going to have to ask. I am going to have to confer with the department on whether I can release the mines or whether I can do it not in an open forum, if that is okay? I know which mines are under directive at the moment.
CHAIR: Obviously our committee is very interested in which mines.
Mr SPRINGBORG: I am happy for the commissioner to take further advice on that.
CHAIR: We can also go into private session, if that would be better for you.
Mrs du Preez: I am quite happy to name the mines in private session; the ones that are currently on notice, on directives. I know who they are. According to my advice, because it is information that is relating to the department and the management of the department, I need to ask the department permission. However, I am quite willing to give you the names of the mines in a private hearing, if that is okay.
CHAIR: Thank you. We can go into private session soon.
Mr SPRINGBORG: With regards to those four level 4 and 29 level 3 compliance meetings, have they involved mines or mine operators that have had previous such issues around noncompliance?
Mrs du Preez: I will have to take that one on notice, purely because I was not here the whole year to know exactly what all the directives were for.
Mr SPRINGBORG: Have they generally been in relation to below- or above-ground mine operations—open-cut or below?
Mrs du Preez: I will have to take that one on notice, as well.
Mr SPRINGBORG: You will be able to give us information, whether it is in relation to metalliferous or coalmines, obviously. With the 10 safety alerts, three safety bulletins and two guidance notes, were any of those in relation to elevated dust levels, which is particularly relevant to our inquiry?
Mrs du Preez: I can tell you with regard to the guidance notes, to the best of my knowledge, no, because we have the minutes from the advisory committee. However, I will take that on notice as well, to make sure.
Mr SPRINGBORG: There were two guidance notes. None of those guidance notes are related to elevated dust levels, but potentially some within the 10 safety alerts and three safety bulletins may have been?
Mrs du Preez: I will take that on notice to make sure that you get the correct facts.
Mr SPRINGBORG: Thank you.
CHAIR: I now go to counsel assisting, for questioning.
Mr McMillan: Commissioner, you stated at the start of your evidence that you believed you were the first independent commissioner since the coalmining safety and health legislations were enacted in 1999.
Mrs du Preez: No. The commissioner’s role has been in the act. The commissioner’s role has come in from 2009, if you open up my statement. The reason why I personally believe it is independent is because it is the first time that it has not been a dual role.
Mr McMillan: Prior to your appointment, is it the case that the person who fulfilled the role of Commissioner for Mine Safety and Health was also the chief mine safety and health officer or the chief inspector of mines?
Mrs du Preez: From my understanding it could have been—it was the DG at the time. It could have also been—yes. To answer that question, from my understanding, yes.
Mr McMillan: You are aware, are you not, that one of your functions under the mining safety and health legislation is to commence proceedings for offences against those acts?
Mrs du Preez: Yes.
Mr McMillan: Have you commenced any proceedings for offences against those acts since your appointment?

Mrs du Preez: Currently no, I have not initiated prosecutions, if that is what you are asking—since I have started, no.

Mr McMillan: So you have not signed any complaints under the Justices Act for an offence against any of the relevant pieces of legislation since your appointment?

Mrs du Preez: That is correct, yes.

Mr McMillan: Have you received advice in relation to any potential proceedings for offences against those pieces of legislation where you declined to commence proceedings since your appointment?

Mrs du Preez: I have not received any recommendations where I have refused prosecution, no.

Mr McMillan: Have you established any protocol or arrangements, either with the director-general or with the mining inspectorate as to how you will be advised when it comes time to considering potential offences under the legislation?

Mrs du Preez: That is very clearly stated in the mining compliance—if you give me two seconds I will give you the name of the document. Currently there is a document called the Mine inspectorate compliance policy implementation guide March 2010, which clearly states exactly when the inspectorate—what they need to do and the steps they need to follow before they come to me to recommend a prosecution. It is very clearly stated in this document, and this is a document that they operate under.

Mr McMillan: Once the inspectorate has completed an investigation and prepares an investigation report—

Mrs du Preez: That is correct, yes.

Mr McMillan:—does that report come directly to you or does it come through the in-house legal unit of the Department of Natural Resources and Mines?

Mrs du Preez: From my understanding once the inspectorate has finished it they will actually, according to the document, then sit in a committee. If they feel that that then needs to be recommended, that report then comes to me. I will then have to go and ask whether it is in-house or an external lawyer at the time—legal advice—because obviously prosecution is very complex and lengthy. Then there are three other questions I need to have answered.

Mr McMillan: I understood from your evidence earlier that the in-house legal unit of the department currently manages all active prosecutions.

Mrs du Preez: They do not—I am trying to decide how to explain this correctly. Currently, at the moment, they utilise external lawyers as well, so—

Mr McMillan: But they manage the conduct of those prosecutions?

Mrs du Preez: They manage—they are the—currently—all the prosecutions currently, at the moment, that have been initiated by other commissioners—they currently at the moment are—yes, they manage it as such, and they utilise the resources as needed.

Mr McMillan: And that includes the provision of instructions to those firms of solicitors and barristers that are engaged to act in those prosecutions, does it not?

Mrs du Preez: If there are any changes, they actually come to myself and they will then discuss what the changes should be and then I will have to sign off to whether those changes take place or not.

Mr McMillan: The director of the in-house legal unit reports directly to the deputy director-general for business and corporate partnerships, according to the organisational chart; is that correct?

Mrs du Preez: I do not know. I do not have that information.

Chair: Can you take that on notice, please?

Mrs du Preez: I will take that on notice.

Mr McMillan: As matters stand at the moment, you have no internally employed or retained legal advisers to assist you in making determinations about prosecutions under the act?

Mrs du Preez: Currently—sorry?
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Mr McMillan: As matters stand at the moment, you do not have anyone working directly for you—

Mrs du Preez: No.

Mr McMillan:—to assist you or advise you about commencing proceedings under the legislation for offences against the act?

Mrs du Preez: Currently, at the moment, because I only have the in-house—the case that is currently ongoing at the moment. I have so far not actually gone and gone through that route yet.

Mr McMillan: Have you given consideration to whether it is appropriate for you as an independent officer to take legal advice from the officers of the department who report to the director-general?

Mrs du Preez: Yes, I have. In fact, after the second week it was something that we had a discussion with, and therefore that is why I say to you it depends on what I use. I either use in-house or I utilise external.

Mr McMillan: And who approves the budget for that legal expenditure?

Mrs du Preez: At the moment I will have to take it on notice, because at the moment I just—I just organise it.

Chair: Can we just explore that a little further. For example, if you do hire external legal advice and the accounts come in, what is your role in relation to that and where does it go from your office?

Mrs du Preez: Currently, at the moment, if that case will have to occur, which it has not occurred yet, I would go and advise the minister and obviously advise the minister on those resources that I require.

Mr McMillan: The in-house legal unit—correct me if I am wrong or if you are not familiar with the arrangements—of the Department of Natural Resources and Mines also advises the director-general and acts for the department in relation to proceedings brought against it, do they not?

Mrs du Preez: I will have to take that on notice.

Mr McMillan: Similarly in relation to the inspectorate, in-house legal unit provides legal assistance and advice to that inspectorate, other than in relation to health and safety prosecutions, do they not?

Mrs du Preez: I am going to also have to take that on notice.

Mr McMillan: Whereabouts is your office physically located?

Mrs du Preez: We are moving to Albert 53.

Chair: I know that you are moving to another area, but where has your office been located?

Mrs du Preez: It has been currently located in Mary Street, purely because they are fixing up the offices in Albert Street. I am not moving to the—

Chair: That is also the same location as the department of mines, is it not?

Mrs du Preez: That is correct, yes.

Chair: In relation to your physical location, do you have locked offices?

Mrs du Preez: No.

Chair: Why not?

Mrs du Preez: There isn’t any, I think.

Chair: Do you have locked filing cabinets?

Mrs du Preez: Yes.

Chair: Basically, any officer from the mines department has access to your physical location of work?

Mrs du Preez: Yes.

Chair: Therefore, the work you are currently working on could be available to officers of the department and yet you are supposed to have an independent office?

Mrs du Preez: Currently we are—to ensure—

Chair: We cannot hear you, sorry.
Mrs du Preez: Currently, to ensure my independence, what we have done is we have set up a completely different system where our filing system is on. We have had the experts come in that have actually set it up from the commissioners. I have no access to the department’s filing systems; they do not have access to my filing systems on any of the systems. We have locked drawers. Although it is not an ideal situation at the moment, we are moving totally away into a completely different building to ensure independence.

CHAIR: The key words are you ‘are moving’, but in the past they have had access to your so-called independent office of commissioner?

Mrs du Preez: They have been able to come to me on the floor, yes.

Mr McMillan: In terms of the advice you receive in relation to potential offences against the act, you have indicated that you are able to access independent legal advice.

Mrs du Preez: That is correct, yes.

Mr McMillan: That advice is reliant upon the evidence gathered by the inspectorate, is it not?

Mrs du Preez: That is correct, yes.

Mr McMillan: And the inspectorate is advised, wherever necessary, in legal matters by the in-house legal unit?

Mrs du Preez: From my understanding. You are going to have to—

CHAIR: Can you speak up, Commissioner? We cannot hear you.

Mrs du Preez: Sorry. You are going to have to ask the department that one.

Mr McMillan: So is your answer that you do not know?

Mrs du Preez: I will have to take that one on notice, yes. You are going to have to ask the department.

Mr McMillan: When you assumed the role of commissioner, you said that you spent some time getting your head around your functions and responsibilities. Did you read and familiarise yourself with the Australian Senate Select Committee on Health report entitled Black lung: ‘It has buggered my life’ from April 2016?

Mrs du Preez: Yes, that is one of the reports you did read.

Mr McMillan: You read it yourself in full?

Mrs du Preez: I beg your pardon?

Mr McMillan: Did you read it yourself in full?

Mrs du Preez: Yes. I think we actually have it with us.

Mr McMillan: At page 30 of that report the Senate committee reported on a number of directives that had been issued by the Department of Natural Resources and Mines between 2013 and August 2015. I will wait; I think somebody is getting a copy of it for you.

Mrs du Preez: Page—

Mr McMillan: At page 30 of the report, paragraph 3.17.

Mrs du Preez: Yes, there are 23 directives. That is correct.

Mr McMillan: Yes, and the committee reported that the department had advised that it had issued 23 directives relevant to coal dust monitoring and mitigation and provided these directives to that committee.

Mrs du Preez: Yes.

Mr McMillan: Then at paragraph 3.19 the committee expressed its concern about compliance with those directives. Notably, the Senate committee in April 2016 reported that only nine of those directives had been complied with at the date of publication and the remaining 14 were excessive of the due date. It goes on to note that, of those 14, the noncompliance periods ranged between 12 days and 12 months. Why have no prosecutions been brought in relation to those noncompliances?

Mrs du Preez: There are certain processes that are taken in prosecutions. I cannot discuss those directives that have happened before my time. However, I can say that there are certain processes and certain tool boxes that are taken with regard to it. Prosecutions are very complex and lengthy and quite often normally take quite a while to get through the courts. It is sometimes more
effective to actually discuss with the operators that they are going to actually stop the operation. I know that is in discussion with the directives that I am involved with; however, I cannot give you any information with these directives that happened before my time.

Mr McMillan: Are you aware of the statutory time limitations that exist in the legislation to commence prosecutions?

Mrs du Preez: Yes—between one year, six months and three years. Yes, I am.

Mr McMillan: Are you mindful of those statutory time limitations in terms of your response to these noncompliances?

Mrs du Preez: Yes, I am.

Mr McMillan: And what steps are being taken by you or your office to ensure that these noncompliances are appropriately dealt with before those limitation periods expire?

Mrs du Preez: As I said, I cannot talk about these directives. I can only talk currently at the moment about the directives that are in place at the moment. I do not have information about these directives.

Mr McMillan: You indicated I think earlier in response to a question from the committee that you could give the identities of particular mines in private session—

Mrs du Preez: That are currently under directive now, yes. I can give you the mines that are currently under a directive now.

Mr McMillan: When you say ‘that are currently under directive now’, do you mean directives that are yet to reach their limitation period?

Mrs du Preez: That is correct. At the moment we are going through the compliance policy.

Mr McMillan: So the department can issue directives for compliance within a reasonable time. You understand that?

Mrs du Preez: Yes.

Mr McMillan: And when you are talking about the mines that are under directive now, are you indicating that those mines are at the moment still within the reasonable time that has been allowed for their compliance with those directives?

Mrs du Preez: Yes, and part of the directives at the current time, especially the one that I know about—there is actually a time limit that the inspectors themselves actually put on to that directive.

Mr McMillan: My questions are in relation to those mines that have been issued with directives as referred to in this document that have not complied with those directives. One of your functions is to prosecute offences under the act. You are aware, are you not, that it is an offence to fail to comply with a directive within a reasonable time?

Mrs du Preez: Yes.

Mr McMillan: Have you sought any advice or assistance from the inspectorate about noncompliance with the directives mentioned in this report?

Mrs du Preez: No, I have not.

Mr McMillan: Why not?

Mrs du Preez: Because I do not have the information about them. My main focus has been focusing on the mines at the moment.

Mr McMillan: When you assumed the office of the Commissioner for Mine Safety and Health, you have just said to this committee that one of the tasks that you undertook was to read this report yourself?

Mrs du Preez: I have read this report, yes,

Mr McMillan: Did it not trouble you to read that of 23 directives only nine had been complied with at the date of publication?

Mrs du Preez: When I came into the role, and as I stated in my statement, my whole focus was to get the systems in place. I have not gone into an in-depth analysis of what has happened in the past. My whole function in the last few months has been trying to get the systems in place and to look forward. I have also been appointed to have a look at monitoring the current state, and that is what I am focused on: having a look at what can be looked forward.

Mr McMillan: When did you read this report?
Mrs du Preez: I read this report twice actually. I first quickly read this report approximately I would say four weeks ago and then I read it again about two weeks ago.

Mr McMillan: So the first time you read it was four weeks after you commenced your position?

Mrs du Preez: Yes, just to get a feeling of what the issues could be.

Mr McMillan: And then you read it again two weeks ago?

Mrs du Preez: I read it very briefly again, yes.

Mr McMillan: Does it trouble you now that, at the date of publication of this report, only nine of 23 directives issued by the department for noncompliance in relation to dust levels had been complied with?

Mrs du Preez: This report was issued in April 2016 so, yes, it means up until April I have spoken and I have sat down—currently I know from when I started how many mines are on directives and that the situation has obviously been rectified. I have not gone into detail into these directives.

Mr McMillan: Can you explain what you mean by ‘the situation has obviously been rectified’?

Mrs du Preez: No, what I mean by ‘the situation’ is that these mines are currently not on directive anymore.

Mr McMillan: Can you explain to this committee what the response of your office has been to the fact that in April 2016—very shortly prior to your appointment—of 23 directives that had been issued to mines in relation to dust compliance 14 at that stage had not been complied with?

Mrs du Preez: I going to have to take that on notice if that is okay.

Mr McMillan: Thank you. In your role as commissioner, are you able to direct the inspectorate to undertake investigations or inspections about potential breaches of the legislation?

Mrs du Preez: I have already once.

Mr McMillan: You have. Is there some understanding or arrangement with the director-general of the department as to the resources that will be applied to any direction given by you about investigations or inspections?

Mrs du Preez: Yes—well, not between me but with the executive director of mine safety and health.

Mr McMillan: And that is in relation to directions given by you?

Mrs du Preez: Yes.

Mr McMillan: Is that in writing?

Mrs du Preez: If somebody comes to me and they have asked me to investigate something, I will initiate a meeting where I will have the necessary chief inspector, plus him, plus legal and I would say I would like to inform them. I then officially give them a brief from myself as the commissioner stating that I would like them to investigate this noncompliance and to report back to me.

Mr McMillan: That arrangement has been reduced to writing, has it?

Mrs du Preez: That brief is in writing, yes.

Mr McMillan: Will you produce that for the committee, please?

Mrs du Preez: Yes, I can.

Mr McMillan: You were asked some questions by committee members—I think particularly by the member for Greenslopes—about your use of the expression ‘the re-emergence of coal workers’ pneumoconiosis’. Is it your evidence that the Office of the Commissioner for Mine Safety and Health was not aware that WorkCover and other self-insurers under the workers compensation scheme were paying approved claims for coalminers dust lung disease in 2006 and 2007?

Mrs du Preez: Currently I do not have the information to answer about my predecessors. I can only answer on the information that I received, and the first time I was aware of it was when it was mentioned here.

Mr McMillan: Were you aware of the fact that officers from the Office of Industrial Relations gave evidence to this committee some weeks ago to that effect?

Mrs du Preez: Yes, and that is why I have just stated that is when I first became aware of it as well.
Mr McMillan: Have you made any inquiries as to the state of knowledge of your predecessors about those claims?

Mrs du Preez: I have asked the department for information. They currently have not got back to me.

Mr McMillan: To return briefly to the Senate committee report, at paragraph 3.21 on the same page, page 30, there is a reference to the offence provision in the Coal Mining Safety and Health Act and then a comment by that committee—

... there appears to be no other statutory consequence for not complying with a Directive within a 'reasonable time'.

Given that none of the noncompliances referred to in this report have been prosecuted, would you agree that there is, in fact, no consequence for noncompliance with those directives?

Mrs du Preez: As I stated before, I will take that on notice because I do not have the information to make a decision one way or the other and to give you my opinion.

Mr McMillan: Thank you, Madam Chair.

Chair: Are there any more questions?

Mr Springborg: I have a question with regard to the independence of the mine safety commissioner’s office and role. I think the commissioner said a little while ago, in answer to counsel assisting’s question, that she did believe it was independent because it is no longer a dual role. I have just checked the Coal Mining Safety and Health Act 1999, which is effective from 27 September this year. Under part 5A, ‘Commissioner for Mine Safety and Health’, division 1, section 73A ‘Appointment of commissioner’ it states—

(4) A person may hold the office of commissioner as well as another position under the Public Service Act 2008.

It appears that there is no statutory guarantee of independence at all for your role. Indeed, quite clearly under the Public Service Act it may be a dual role. It is just that there has been a process put in place where they have chosen not to do that. I have just checked the Health Ombudsman Act, which I know intricately, and it talks about statutory independence in appointments and those sorts of things. In light of that, would the commissioner like to reconsider her answer?

Mrs du Preez: I have just been advised that is correct. That is why I took it on notice. That is correct. If you have a look at the Public Service Act, it states that. It also states that a person may hold the office of commissioner as well as another position under the Public Service Act. However, I only hold the role of commissioner.

Mr Springborg: That is right; you hold the role of commissioner but there is no statutory independence for yourself.

Mrs du Preez: That is correct.

Mr Springborg: It is basically at the good grace of the director-general of the minister of the day. There is no guarantee of statutory independence.

Mrs du Preez: That is correct, yes.

Chair: Thank you very much. We will now close the public session and go into private session.

Evidence was then taken in camera—

Committee adjourned at 12.54 pm