INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE

Members present:

Mr J Pearce MP (Chair)
Mr CD Crawford MP
Ms AM Leahy MP
Mr AJ Perrett MP

Staff present:

Dr J Dewar (Committee Secretary)
Ms C Furlong (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE MINES LEGISLATION (RESOURCE SAFETY) AMENDMENT BILL 2017

TRANSCRIPT OF PROCEEDINGS

MONDAY, 25 SEPTEMBER 2017

Brisbane

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Committee met at 9.32 am

CHAIR: Good morning. I declare open the public hearing for the inquiry into the Mines Legislation (Resources Safety) Amendment Bill 2017. Thank you for your attendance here today. I am Jim Pearce, the member for Mirani and chair of the committee. The other committee members here with me today are Ms Ann Leahy, the deputy chair and member for Warrego; Mr Tony Perrett, the member for Gympie; and Mr Craig Crawford, the member for Barron River. Mrs Brittany Lauga, the member for Keppel, and Mr Shane Knuth, the member for Dalrymple, are apologies for today's hearing.

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. 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. Before we commence, I ask you to turn your mobile devices to silent or turn them off. I now welcome the Commissioner for Mine Safety and Health. Do you have an opening statement to make?

BEARE, Mr Geoff, Director, Office of the Commissioner for Mine Safety and Health

du PREEZ, Mrs Kate, Commissioner for Mine Safety and Health

Mrs du Preez: Yes, I do. Thank you. Thank you for allowing me to address the committee today. In June 2016, I was appointed the Commissioner for Mine Safety and Health, providing advice directly to the minister. The role of the Commissioner for Mine Safety and Health was created in 2009 following a recommendation from the Queensland Ombudsman as part of the 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 and monitor and report to the minister and to the parliament on the administration of provisions about safety and health under mining legislation. While I have no operational accountabilities, I have powers to commence prosecutions and to take out injunctions when there are health and safety problems.

Also in my role I chair the Coal Mining Safety and Health Advisory Committee and the Mining Safety and Health Advisory Committee. The advisory committee includes tripartite 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 our mine and quarry workers including, for instance, recommendations in regard to draft legislation such as the current bill. Since 2009, the commissioner has reported annually to the parliament on the performance of the Mines Inspectorate. I see my role as providing support to ensure that every Queensland mineworker goes home safe and healthy every day.

Turning specifically to the issue at hand, the department first started work on the package of safety and health amendments in or around 2013. These amendments were either aimed at addressing Queensland-specific mine safety and health issues or issues resulting from national harmonisation processes, namely, the National Mine Safety Framework and model work health and safety laws. Other amendment proposals resulted from recommendations from the coroner following inquests into mining related deaths and, more recently, consultation on high potential incidents. Feedback on the amendments continued through 2015 and 2016. Some of these amendments have been proposed for significant periods and are considered of such safety and health importance that I would like to stress this point: there is a degree of relief from some of the tripartite stakeholders that they are finally being implemented.

In early 2017, two working groups, one for coal and the other one for mineral, mining and quarrying, made up of representation from the tripartite stakeholders were established. An initial package of 22 draft amendments were put to the coal industry working group and 19 draft amendments were put into the mineral, mining and quarry working group. Most of those amendments were common to both the Coal Mining Safety and Health Act and the Mining and Quarrying Safety and Health Act, so the total number of amendments were far fewer than the 41 amendments that

were considered. These working groups worked directly with the department to refine the draft amendments and sought to resolve any disagreements on the proposals. Once completed, those amendments were also taken to the Coal Mining Safety and Health Advisory Committee and the Mining Safety and Health Advisory Committee, which obviously covers your mineral mining and quarrying, for consideration and advice.

Following consideration by the advisory committees, separate independent advice on the draft proposals were given to the minister. As part of this process, I also considered the draft provisions with a view to providing independent advice to the minister. I met with key stakeholders separately to obtain their points of view, sought independent advice and undertook independent research to consolidate and distil a single considered opinion on the draft proposals. I then independently advised the minister in regard to those matters.

The net result of these processes is a package of 15 amendments in the bill. This package includes those amendments on which there has been mostly tripartite agreement on advancing. As you can see, most amend both the Coal Mining Safety and Health Act and the Mining and Quarrying Safety and Health Act.

There will always be threats and hazards associated with the mining industry. Our focus and priority is to identify them and negate them. In this regard, the advisory committees have both commenced an effectiveness review of their respective legislation under the requirements of their act. The requirements are to periodically assess the effectiveness of the act, regulations, recognised standards, Queensland guidelines and the effectiveness of the control of risk to any person. It is the first time in 16 years that such a review has been conducted. Although the acts and regulations are acknowledged by many people as world's best practice, there will be some finetuning of them, which results from these reviews. The reidentification of coal workers' pneumoconiosis is a timely reminder that there is no place for complacency in worker safety and health.

This package of amendments provide a focus on three things: greater transparency and accountability, improved safety in health systems, and stronger enforcement and compliance powers. In doing so, the bill addresses a number of key safety and health issues and will, in my opinion, result in higher safety and health standards and, therefore, improve the health and safety in our mining industries. This bill is needed to aid in our goal that every worker goes home safe and healthy. Thank you.

CHAIR: Thank you for your contribution. Do you sit in on the advisory committee as a member or do you just go along to see what is happening?

Mrs du Preez: No, I am the chair of the advisory committee. I also have an independent position on that advisory committee.

CHAIR: An independent position?

Mrs du Preez: Yes.

CHAIR: How do you report to the minister? You are independent. Do you have to report the findings of the advisory committee—the outcome of these committee meetings—or, if you are not happy with something that comes out of that meeting, do you report to the minister that you are not happy?

Mrs du Preez: There are two different briefs. Firstly, since I took over as chairperson of the advisory committee, at each meeting there is an agreement among the advisory committee of what areas or advice they would like to report to the minister in regard to their function. Therefore, that brief is specifically for the advisory committee and that is the collective opinion of that advisory committee. I also brief the minister independently as my role as commissioner. It might be that I feel that there is an issue with the advisory committee, but that is a separate opinion that I brief the minister on. Does that answer your question?

CHAIR: Yes. I will have to give that one a lot more thought. If you cannot talk to the minister about things that are not acceptable, or you are not happy with, are you really independent?

Mrs du Preez: I believe I am. I believe that, currently, the tripartite group is well represented on the advisory committee. I must also stress that one of our roles as a committee is that, if a decision has been made and not all parties have agreed, that is advised to the minister. For example, the advisory committee brief will state, 'A decision has been made.' It will then say, 'This stakeholder and this stakeholder voted in agreement. However, that stakeholder has not.' That will be clearly given to the minister to ensure that he is briefed fully.

CHAIR: The minister can ask you why?

Mrs du Preez: The minister can then ask me why and he can ask me my opinion as well.

CHAIR: Thank you. That helps a lot. Could you outline why it was felt necessary to have an additional departmental officer on the advisory committee?

Mrs du Preez: As you would know, and which has been discussed, when I became the Commissioner for Mine Safety and Health it was the first time that the position had been split. Previously, the commissioner's role had been dual. The person not only has been a commissioner but also had an executive position in the inspectorate. Therefore, when the advisory committee met at their meetings, they had equal representation on that committee. We had three from the union, three from the industry and three from the inspectorate. However, my role is now independent and I do not hold the view of the inspectorate; I hold an independent view. Sometimes I agree with them; sometimes I do not. Therefore, because of that, the inspectorate has only two people on that advisory committee whereas all the other stakeholders have three.

CHAIR: Do you or does your organisation have any concerns about the change to the advisory committee composition and the powers of the minister? If you have, could you outline those for us, please?

Mrs du Preez: No. I think it is something that we have been trying to push for over a year. I believe that the advisory committee is a very important part of our industry. This is where we get the opinion of all the stakeholders on the table. Therefore, they need to have equal representation. I also believe that, as you can imagine, when we have some departmental resignations, or changes, to get a person back on to the advisory committee can sometimes take a while. It has been known to take up to nine months. Obviously, this can hinder what we want. It can hinder the intent of the advisory committee. Therefore, I have no concerns about the proposal that the minister has made.

CHAIR: Out there at the grassroots level in Central Queensland I have had a lot of mineworkers say to me, 'Why is it taking so long to get these changes into legislation?' Would you like to give us some idea what you think about the process and why it has taken so long?

Mrs du Preez: As I said in my opening statement, some of the tripartite stakeholders are very relieved and very glad that some of these amendments have been made. I cannot fully comment on the process of the government because I am not in administration. I can only advise. However, I believe that the government does need to re-examine in order to allow us to get things done a lot quicker.

CHAIR: To re-examine?

Mrs du Preez: Re-examine the process.

CHAIR: It would be unfair to ask you how we should do that I guess.

Mrs du Preez: No, unfortunately I would not be able to comment on that.

CHAIR: It would be good if you could.

Ms LEAHY: Thank you, Commissioner, for coming in today to brief the committee. I am just curious in relation to the position of commissioner. I note in your report that the position was established under the coalmining and safety act.

Mrs du Preez: Yes.

Ms LEAHY: In terms of those people who are employed as the commissioner and also in the commissioner's office, what piece of legislation are they employed under?

Mrs du Preez: The Public Service Act.

Ms LEAHY: The Public Service Act?

Mrs du Preez: That is correct.

Ms LEAHY: Therefore, you are answerable to all the normal Public Service requirements under the Public Service Act?

Mrs du Preez: Yes, that is correct. I think you will see that is what has been looked at under one of the recommendations that has come through from the CWP inquiry.

Ms LEAHY: Thank you.

Mr CRAWFORD: I am interested in the contractors and how they are treated. Through a number of different inquiries that I have been on we have heard statements and evidence from contractors out there about not being treated the same and everything like that. Are you satisfied that this will go in the right direction in relation to contractor safety and accountability for them out there or for the people that oversee them?

Mrs du Preez: I think this makes a huge difference; yes, I do. As you can understand, our workforce has changed over the last three years. Approximately 50 per cent of our workforce is now contractors. It is critical to everybody on the mine that everybody works under the same safety and health management system. In the past under the existing provisions of the legislation while the contractors and service providers are required to comply with the mine safety and health management system there has been no requirement to integrate their system into the mine safety and health system. Two Coroners' recommendations have come out now that say this has to be made clearer. Therefore, I am very excited to see those changes in these amendments going through. Currently under this amendment it clarifies the obligation of the SSE. The obligation of the SSE is to not only ensure that contractors now fall under the same safety health and management system but also there is an obligation on the SSE to ensure that there is adequate supervision and monitoring of the contractors. I think that is a very clear point that needs to be made. On the other hand, there are also obligations of the contractor to work with the SSE to ensure that their system and their plans fit in to the mine's system, because you can understand that sometimes the contractors are utilised for unusual work on the mine or they have been brought in for extra expertise and unusual maintenance. Their systems or their SHMS procedures might not necessarily be in the mine safety health and management systems. Therefore, it is now the obligation of the SSE to ensure that these processes match and get integrated into the system. What I like about this is that it also ensures that our contractors understand the mine safety and health processes and the mine environment which is specific for that mine, including the risks.

Mr CRAWFORD: Thanks.

Mr PERRETT: Thank you for coming in today. I want to get more of an understanding about your role and why you are interested in this. You worked previously in the department of natural resources?

Mrs du Preez: No.

Mr PERRETT: You have come from a background—

Mrs du Preez: My passion originally is underground coal mining. As I state to most people in the industry, I started off as a miner. I am a miner. That is where my passion is.

Mr PERRETT: So why your interest in this particular area then in terms of applying for the commissioner since June 2016?

Mrs du Preez: Yes. I think there are two aspects. First of all, it is my function to advise the minister on anything with regard to the safety and health of the workers but, secondly, I believe it fills my role out because I started at the face. My passion is that everybody goes home safe and healthy every day. This is my industry. It is the first time I have worked in government. I have come more from the operational side, so I have worked from the grassroots right up into the management area and I can understand what impact this bill and the amendments in this bill will have on the everyday worker who is working in our mining industry.

Mr PERRETT: Obviously there is a significant amount of interest and the spotlight is on the industry, particularly with the catastrophic failings with coal workers' pneumoconiosis and the problems that have been identified and what is going through the parliament at the moment with respect to that. How does your role and how does your interaction with the minister work?

Mrs du Preez: My role with the minister works as an advisory role. I have meetings with the minister and I also advise the minister through ministerial briefs.

Mr PERRETT: They are regular meetings that you have or are they just as necessary?

Mrs du Preez: Both. At the moment I have been averaging a meeting a month with the minister. However, if an area of concern obviously arises where I feel that I need to see him, then I obviously see him more frequently depending on what the situation is.

Mr PERRETT: Are those meetings full and frank?

Mrs du Preez: Yes. I am not a politician; I am a miner, so unfortunately sometimes my language is not the most diplomatic.

Mr PERRETT: That is good to hear because, as I alluded to before, there have been some significant failings within mine safety and health for some time. Obviously while no direct apportion was blamed with CWP, it is obviously something that needs to be addressed correctly. This legislation that we are now assessing and providing recommendations back to the parliament on does require significant scrutiny to make certain that it actually delivers. With what is proposed in this legislation, are you confident that it can address some of the shortcomings that perhaps you have observed with respect to that but being reasonable and fair through the processes?

Mrs du Preez: Yes. Firstly and foremost, I would like to state what I do like about this process and about this act and bill—that is, it has been worked through by a tripartite committee. This has not only been the department's ideas of what needs to be fixed; this is actually all stakeholders' ideas of what needs to be fixed. I would also like to state that I believe there has been some failings, but I also believe—and I think a lot of people in our industry believe—that our legislation is also good in many ways. In fact, many countries like New Zealand and India copy quite a bit of our legislation. Our legislation has produced some really good results. However, as you know, mining is dynamic. We have constantly changing technology. We have just spoken about how the make-up of our workforce has changed. We have changing environments. We are getting deeper. Our longwalls are getting longer. Because of that, we always need to review the effectiveness of our legislation to make sure that any gaps are identified. I believe that the minister and the government have tackled areas of weakness, and this is what this bill addresses.

Running concurrently to this, the advisory committees have now started an effectiveness review of the act, legislation, recognised standards and guidelines. We have now come through already to the process, because the first thing we need to understand is how to measure effectiveness. It is a very difficult concept. The second thing is how we are physically going to measure effectiveness. We need to look at our act to see that we have areas where the legislation and the understanding of the legislation is good. We have areas where the legislation is good, but maybe the understanding of our legislation is not good. We have areas where our legislation is not adequate, but the industry has put in their own provisions. A good example of that is with regard to lead. We also have areas where our legislation is not adequate and the understanding is not adequate, and they are areas that we need to review and advise the minister on those areas that need to be fixed. I see this as an ongoing process. Because mining is dynamic, I believe that we need to keep on reviewing our legislation to ensure that it meets the dynamic situation of our mining industry.

Mr PERRETT: How do you go about that with respect to the interaction between the companies and the workers and the representatives of the workers? What is your process? Where you think there is an issue, how do you go about trying to, firstly, identify it and then resolving it?

Mrs du Preez: I do a two-part process. First of all, as the chair of the advisory committee, I will bring up the concerns at the advisory committee and that advisory committee is again, as I said, tripartite. Also as the commissioner I independently go and constantly have meetings with all stakeholders. I have meetings with industry and with CCAA. I have meetings with unions—and that is not only the CFMEU; we have the AWU and also the ETU on the advisory committee—as well as meetings with the department. My role is to not only chair that advisory committee but also have that independent role where I meet constantly with the stakeholders. It is only that way that I can understand the areas of frustration industry or the workers on the floor via the unions or the department have. The other thing I do which I believe is unique is I am someone who does not believe in sitting in the office. So far—I think we have counted in the last year—I have had 14 mine visits, so I physically go out to the mines to talk to the management and to talk to the workers on the face. I also go to all the mine rescue competitions, because I believe that I can't sit in a building and look at every regulation and write every regulation and act possible but if it is not practical and if it is not the concerns coming from industry it is not going to work.

Mr PERRETT: In terms of those face-to-face meetings you have, is there generally goodwill between parties to resolve identified issues?

Mrs du Preez: I fully believe that mining has always had robust discussions. However, one thing—and it is a comment that I have made in the new commissioner's report—is that due to the re-emergence or the rediscovery of coal workers' pneumoconiosis I have seen all stakeholders come more willingly to the table than ever before. In the past I do not think we have always been coming to the table as openly, but with the re-identification or the problem that industry has faced this year I can honestly say that the communication—the open, frank communication—between the stakeholders has probably been the best it has ever been.

Mr PERRETT: That is good. Thank you.

CHAIR: I am very interested to hear you say you talk to workers.

Mrs du Preez: Yes.

CHAIR: What is the environment that you are placed in when you are able to talk to workers? Are they in the company of management from the mine or do you take them aside and talk to them?

Mrs du Preez: I have been very fortunate that mine management has allowed me to go there. Obviously you have to be, according to the safety process, escorted, but once down on the face I have been given full rein to sit and chat openly with the workers on my own. That is probably because

I started at the coalface, so I have no issues climbing through a longwall and sitting and chatting to the operators. Another classic example is I sit and chat to the teams at the mine rescue competition in that I will go and sit with them and have a good chat and say, 'How are you finding the competition? Did you find that you can take these skills underground?', as an example.

CHAIR: If a face worker talks to you and raises an issue, do you then discuss that issue with management as you leave the mine, because a manager would know who you had been talking to?

Mrs du Preez: It depends. There are a few things and a few ideas. I need to get the general opinion of what the workers believe underground or in an open-pit mine or in a small quarry mine and this helps me to form my opinion when I advise the minister. The other thing is that—and that is something that has been coming up quite a bit and I am quite glad that stakeholders have been utilising this method—if they feel there is any concern that they have not been able to address with management, they will actually write a letter to me. That way, depending on the severity of it, I can then get the inspectors to investigate the situation to see if there is a non-compliance issue or decide whether they must audit that situation.

CHAIR: I think most mine workers would be more than willing to step forward and talk to somebody like yourself, but you might have heard me mention earlier this fear that they have of being identified, targeted and eventually losing their jobs. It is happening out there big time.

Mrs du Preez: I agree, especially with regards to contractors. That is why it is crucial that this bill is a right step forward and that we get that across the line, because it brings in the contractors under the mining system.

CHAIR: Do you have a little note or something?

Mrs du Preez: What he was basically saying, just to back that up, is that at the moment we are investigating where a mine worker has found that, because they have been outspoken, if that is what you would like to say, with regards to a safety and health issue they will be targeted. That has been brought to my attention and, as you heard earlier, we have provisions in the act which mean it cannot be done. Currently, an investigation is ongoing with regards to it.

CHAIR: There will be miners who would be listening to this or who might read *Hansard* later on. I hope that what you just said assures a concerned mine worker who steps forward to talk to you about that, if that mine worker, male or female, feels as though some action has been taken against them as a result of their discussion with you, that you are in a position to assure those mine workers that they will be protected?

Mrs du Preez: I think it is very serious that that message gets across and that is why it is important that I stay independent. That is why I have taken a lot of time and effort to try and go out to as many operations as I can to try to get that message across. The only way we will keep our people safe and healthy is if we change the culture. There are lessons every day underground. They are free lessons. If we do not write those lessons down and learn from them, we will not achieve our goal.

CHAIR: That is very refreshing to hear you say that. I have a large mining electorate and I talk to workers all the time. I talk to distressed wives and partners. That is refreshing to hear you say that, because workers want to step forward because it is their own lives and their work mates' lives that are at risk here. They want to be able to step forward and know that they are protected, especially if they have already raised it with management and management says, 'If you do not do the job, I can get somebody else here tomorrow that will do the job.' That is a threat.

Mrs du Preez: Yes, it is one that I take very seriously because, as I said, we need to learn our lessons.

Ms LEAHY: Just a couple more quick questions, commissioner. Following on from the chair's questions in relation to complaints that you are currently dealing with and investigating, you have been proactive in going out to sites. Why is the inspectorate in the department not being proactive like that?

Mrs du Preez: It is very difficult to understand the different roles of the inspectorate as well compared to my role. The inspectorate do go to site. They have a huge auditing process. That auditing process is based on risk. One of the other KPIs the inspectorate has to have is stakeholder engagement. I am sure if you ask the department they can give you a whole list of the different types of stakeholder engagement. As we have learnt with CWP, these are lessons that we can learn from.

Ms LEAHY: Just a couple of other questions. What is the difference between your advice to the minister and that of the inspectorate who are doing obviously investigations of the workplace? What are really the key differences?

Mrs du Preez: Mine is independent and mine takes a whole view of all the stakeholders. I also look at a different aspect of the mining industry. I am there for the health and safety of the mining industry. The first core value of the inspectorate is regulation and compliance, whereas I look at things from a different point of view and therefore believe that I can bring a different perspective and different advice to the minister.

Ms LEAHY: Have you ever raised any concerns in relation to the inspectorate's regulation?

Mrs du Preez: I think there are concerns with regards to how the industry does it. Currently, I am running an external process with an external company, PWC, and we are busy looking at the compliance policy of the inspectorate. That is why I am very glad that we have more enforcement and compliance in this act, because I believe there needs to be more flexibility for the inspectorate in order to perform its roles.

Ms LEAHY: I think you might have mentioned in your opening statement that you have powers to prosecute; is that correct?

Mrs du Preez: That is correct.

Ms LEAHY: Can you tell me how that works in relation to any investigations that the inspectorate might initiate? How do the two work together?

Mrs du Preez: That is one of the main reasons we have had a look at this compliance review, because at the moment there are dual powers to prosecute. At the moment, a full investigation is a natural course. That will then go to a compliance committee. The compliance committee is then chaired by the ED where there are investigation officers and in-house legal. They will then make a decision. I at any time can review that decision, decide whether to agree or not to agree with it. In making my decision I will also get independent legal advice. That is the first process. The second process is if any complaints are brought to my attention by the workforce or by one of our stakeholders, I will ask the inspectors to investigate. Once they have come back with their facts and evidence, I will seek independent legal advice and then make a decision about whether prosecution is necessary.

Ms LEAHY: Can you help me a little bit here? I am a bit confused about the direct line of sight that the inspectorate might have. You mentioned that they might report to you as well?

Mrs du Preez: They do not report to me. I do not have an administration role, but if I instruct them to do an investigation, my instruction is to investigate a certain aspect of where I feel there was non-compliance with a certain act. Then they will investigate it, that is, they will get the evidence, do the interviews and come back with an investigation report for me. Out of the investigation report, I will make an independent decision. I will go to independent legal advice and from that I will decide whether or not a prosecution is adequate.

CHAIR: Do we have any questions on notice? There being no further questions I close this session and thank you for being here today.

MACFARLANE, Mr Ian, Chief Executive, Queensland Resources Council

BERTRAM, Ms Judith, Deputy Chief Executive and Policy Director Community and Safety, Queensland Resources Council

HANSFORD, Mr Shane, Health and Safety Policy Advisor, Queensland Resources Council

CHAIR: I now welcome representatives from the Queensland Resources Council. Do you have an opening statement?

Mr Macfarlane: I thank the committee for asking the QRC to appear today to speak on behalf of our members. QRC is the peak representative organisation of Queensland resources sector companies. We have a 230-strong membership encompassing minerals and energy exploration, production and processing companies and associated service industries. I am the chief executive of the QRC. My colleagues appearing with me today are Judy Bertram, our deputy chief executive and director of community and safety policy, and Shane Hansford, our health and safety policy adviser.

QRC has provided a detailed written response to the proposals in the bill. Therefore, I will only quickly set out our position on those proposals. First, however, I would like to make a couple of general comments regarding the bill. My first comment concerns the process for preparing and consulting on the bill. While I know that some of the issues hark back to the regulatory impact statements of 2013, I would comment that that is quite a while ago. Some others have only just recently surfaced and have had virtually no consultation. This bill comes very quickly on the heels of the Mine Safety and Health Authority Bill, meaning that the industry has had a lot of proposals to absorb in the last short space of time. QRC is concerned that the process has been rushed to the point that we risk unintended consequences. We must also confess that some questions this committee may ask us as a representative body we may need to take on notice. Policy has been so quick that we may not be confident of the industry's consensus on all things this committee might want to explore.

My second point regards the original intent of the national mine safety framework and the regulatory impact statement that it spawned in 2013, which was the Queensland mine safety framework consultation RIS. The stated aim of the RIS was to increase the level of consistency between Queensland's mining safety framework, the framework of other major mining jurisdictions and the framework for regulating safety that operates in industry more broadly. For Queensland, that is the Work Health and Safety Act 2011 which is based on model legislation developed nationally. The intention was to adopt greater uniformity where that provided a safety benefit. QRC has long been an advocate of harmonising these legislative frameworks to achieve a best practice outcome because of the benefit it would bring to our members, particularly those many companies that operate under both mining and non-mining frameworks.

The QRC does not however support the approach that was proposed in 2013 and that has resurfaced in some aspects of this bill. That approach is to cherry-pick certain aspects of the Workplace Health and Safety Act and apply them without the benefits of a wider legislative harmonisation that could have been achieved. The main outcomes seems to be an attempt to align penalties and some legislative obligations without addressing the fundamental differences to the rest of the frameworks. This is even more questionable when there is no attempt to align other aspects of the penalty regime framework such as the proposal for civil penalties in this bill which differs so radically from the application of civil penalties under the Workplace Health and Safety Act.

I will now quickly outline the QRC's position on the proposals in the bill in the order in which they are listed in the committee's website and then try to answer the questions that the committee may have. The QRC has previously not supported additional statutory positions in relation to ventilation officers and competency, nor do we support certification requirements more broadly unless a clear case is made that they will result in improvements to health and safe; however, because of the additional focus on ventilation to achieve an acceptable level of risk from exposure to respirable mine dust, the QRC is willing to support this proposal in the bill. The QRC suggests however that the proposed requirement for an alternate to be appointed if the ventilation officer is away more than seven days should be extended to 14 days to reduce unnecessary impacts on mining operations.

In relation to inspector powers for workplace entry, the QRC is not opposed in principle to this proposal in the bill, but is uncertain whether it is actually needed. Investigators need reasonable access to all relevant material if we are to understand and learn from serious accidents and to effectively prosecute those who breach the legislation. The QRC has always been of the understanding, however, that the existing powers of entry under mining safety legislation encompass

premises off mine sites, but only so far as the work at that place affects safe operations at the mine. The potential for the proposal to cause greater jurisdictional uncertainty needs to be considered carefully by relevant ministers. QRC wonders whether any necessary collaboration between the regulators could be better achieved through a memorandum of understanding.

In relation to manufacturer, supplier and designer and importer notification requirements, QRC supports this proposal in the bill. It is one of the aspects of the harmonisation safety legislation that indicate that the framework is worth exploring more broadly for its possible application to mining.

In relation to contractor service provider management, QRC is not opposed to this proposal but notes that it is far less detailed than it was originally intended in the 2013 RIS. The QRC believes that the effectiveness of the legislative requirements need further review through the advisory committee process. We believe that such a review could address the residual concerns regarding contractor engagements and the single SHMS requirement and ideally it should compare it to other models such as the one that applies under the Work Health and Safety Act.

In relation to the advisory committees and the board of examiner membership, the proposals to increase the number of inspector representatives to three and for appointing chief inspectors by reference to their position are supported. The QRC believes that the principle of ensuring advisory committees have enough practical experience is important. However, it is also noted that the committees could benefit from a broader range of experience in their membership. The recent example of the coal advisory committee having to deal with CWP demonstrates that this committee may have benefited from additional health or hygiene expertise. The QRC therefore supports this proposal in principle provided the committees still retain adequate practical mining experience to remain effective.

The proposed safety and health management system requirements are supported in principle, noting my earlier comments that a more comprehensive review of the single SHMS framework should be undertaken.

In relation to the register to be kept by the board of examiners, again this proposal is supported in principle provided its application is consistent with privacy principles.

The proposed amendments for the coal act in relation to health surveillance are fully supported as they are consistent with the Monash review recommendations. The proposed amendments to the mining and quarrying safety legislation are supported in principle. The QRC reserves the right to further discuss any requirements for health surveillance in the metalliferous mining sector that are proposed as a result of the recommendations of the ongoing inquiry by the CWP committee into respirable dust exposure.

In relation to notification of diseases, the proposed amendments are supported in principle, however, the QRC believe that further amendments are required to ensure that the SSEs are aware of any serious health issues that are likely to pose a safety risk at the mine. The QRC also believes that further legislative amendments are required to fully disentangle the issue of fitness for work from health surveillance and to allow fitness for work to be managed just like any other hazard at a mine. This was proposed in the 2013 RIS, but has stalled. QRC understands the amendments were drafted but not ever progressed and we encourage the minister to also release these amendments for stakeholder comment. We believe these amendments are likely to be consistent with Monash recommendations.

In relation to release of information, the proposed amendments to improve the ability of the inspectorate to disseminate information about accidents, high potential incidents and other matters to industry are supported in principle provided adequate protection of personal information is provided.

The QRC supports in principle the proposal that the existing power of the chief executive to make a statement about the cancellation of a certificate of competency be expanded to cover the cancellation of an SSE notice. QRC does not, however, support the proposal to allow the chief executive to cancel a statutory ticket.

In relation to penalties, the QRC does not support the proposed increases in penalties as there is no evidence that courts have felt hampered by the current penalties being too low. Again, it is a meaningless token attempt at alignment that does not address real deficiencies in the current legislative approach. However, if it proceeds, the QRC believes that there should also be an ongoing alignment between the value of the penalty unit under the resources legislation and the Work Health and Safety Act.

In relation to officer obligations, the QRC supports the proposal to remove the reverse onus of proof that exists in the current provisions and supports in principle the adoption of proactive obligations for executive officers. The QRC does not support the proposal to adopt the definition of 'officer' from the Corporations Act 2001 as it would expand the range of statutory obligations that apply with no safety case having been made for the proposed change. This is an example of attempting limited alignment between the enforcement aspects of the safety legislation without addressing the differences or delivering any of the benefits that would come from broader legislative harmonisation.

There are fundamental differences between how the mine safety legislation works and how the general workplace health and safety legislation works. One of the most notable differences is the identification of statutory positions that have defined obligations under the act. There is no equivalent to these so-called safety critical positions in a general workplace such as a construction site.

In relation to continuing professional development, the QRC does not support the proposal for the BOE to decide, impose or oversee CPD requirements. The BOE needs to be reviewed to ensure it is properly resourced and professional enough in its own operations to oversee the professional development of holders of mining statutory tickets. The QRC has long held the concern that the board would not be able to cope with an increased workload from additional statutory ticket or competence requirements. This is also an example of how the changes introduced by the legislation are being represented as insignificant and as introducing only minor changes to implement. Previous assessment, however, would indicate that there will be significant cost increases to implement any changes related to the board of examiners' issued competencies. These proposals have a direct impact on the level of regulatory burden associated with the mining safety framework.

In relation to suspension or cancellation of certificates, the QRC does not support the proposal to allow the chief executive to cancel certificates or notices held by statutory officers. The proposed process of appeal to the Magistrates Court does not provide adequate assurances that natural justice will be provided. Given the lower impact of suspension, the QRC is willing to consider a proposal to allow the administrative suspension of a certificate or notice for a period as an alternative to prosecuting lower order offences. Cancellation of a statutory ticket should only be granted by application to the Magistrates Court.

In relation to civil penalties, the QRC does not support the proposal to provide the chief executive the power to impose civil penalties. The proposal effectively introduces a system of administrative fines that are inappropriate in the context of potentially serious concerns about mining safety and health. The QRC would be willing to contemplate a system of civil penalties similar to that within the Work Health and Safety Act 2011 for minor administrative breaches with a maximum penalty of 100 penalty points. If the proposal is to proceed largely as proposed, then it needs at least to be amended to remove the prospect of double jeopardy and to provide a more reasonable time frame to respond to civil penalty notices. Thank you for your time and we await your questions.

CHAIR: I acknowledge that you have only been there for part of this process.

Mr Macfarlane: And that I am not a lawyer.

CHAIR: I am interested in what you think about the time frame that it has taken to put these amendments to the parliament given that there is probably going to be more to come. What is your reason for it taking so long to get these important safety issues addressed?

Mr Macfarlane: I can understand your frustration. Having been in your position, these things always seem to take longer than they should but the bottom line to all of these things is firstly you need to ensure that the changes will not have unintended consequences and secondly, of course, we need to go through a consultative process, then a legislative process, then a committee process. We would like to see changes which benefit health and safety introduced as quickly as possible but unfortunately that does mean that we can take shortcuts. Whilst some of these aspects have been around a very long time, and I understand the committee's desire to get them done, some of them are quite recent and we have not had the time nor the depth of examination to be sure of them. I accept that it would be great to get these proposals where the QRC supports them implemented as soon as possible but they are going to be there for a very long time so we need to make sure that they are right.

CHAIR: I might suggest that a lot of the delay can be pointed back to industry in that in a lot of cases mining companies have to be dragged kicking and screaming to make change, especially if it means that those changes are going to put a lot more responsibility back on the management at mine sites. What is your response to my suggestion that mining companies have a bigger role to play in sitting down and saying, 'Look, okay, we have to get on with this. Let us get it done. Stop the mucking around and let's get on with it.' This is about workers' livelihoods.

Mr Macfarlane: I would say from my experience in this position, which is 12 months, and also my position as a non-executive director of a company, that the management take very seriously their obligations and they also take very seriously the need to improve safety. I think if you look at the mining industry and compare it to other industries, and I perhaps would compare it to agriculture, the advances in health and safety in mining over the last 20 years have been substantial in comparison to other industries. Secondly, I think that companies themselves take a zero harm approach at every level. Management, board of directors, et cetera, are all extremely focused on what they can do to ensure that every worker works in a zero harm environment.

I would hope that if you have examples where companies have, as you say, been dragged kicking and screaming that the QRC could work with you to ensure that that does not happen in the future because where the industry agrees with the regulator and with the employee representatives and where there is not an industrial relations issue being used in the guise of a health and safety issue then we are keen to implement it. If you look at, for example, the CWP inquiry, particularly the Monash recommendations which we adopted in full, if you also look at the other aspects that we have worked through in relation to CWP, I would be bold enough to say that we are in advance of the legislation—that is, in relation to the things that are likely to come out of the committee chaired by the member for Bundamba, we the industry, in consultation with the government, the department and the employee representatives, are likely to implement those changes before the committee actually legislates them.

I have said right from the start that the QRC's role is to facilitate good health and safety process and the mining companies, from my experience, particularly the bigger companies, are very conscious of that at every level.

CHAIR: When we talk about safety in the workplace, having been in the industry, I have always believed—and I think any board member with common sense would agree with me—that experience and knowledge are some of the best things that you can contribute towards workplace health and safety. At the moment, we have industrial action happening out on mine sites where expertise, knowledge and commitment is being overridden by a desire to use people who do not have any experience—people from Coles, people who have worked in restaurants, or whatever. There is nothing against them personally, but I am talking about expertise in and knowledge of the mining industry itself. How can what is happening at some mine sites here and in New South Wales be in the best interests of safety?

Mr Macfarlane: I cannot comment on individual cases and I have a pretty good idea of the cases that you are referring to. The companies that operate the mines are responsible for the health and safety of those mines. On that basis, the companies require the right to operate those mines. That is a fundamental issue. If they are going to be held responsible, they need to be able to manage the mine as they see the mine should be managed.

In terms of health and safety, as I say, where there is not an overlap with industrial relations my experience in the past 12 months has been that mining companies have been only too prepared to implement changes to health and safety to improve it. I cite another example. We had a safety share at the start of our board meeting the other day. Companies are adopting a new process in relation to dealing with liners in excavator buckets as a result of the tragedy that occurred in Central Queensland recently. Companies will implement those changes ahead of, as I say, any regulatory requirement, but at times there is some confusion between industrial relations issues and workplace health and safety issues. I have to leave it to the individual companies that, as I say, have the right to manage the mine as they see it should be on the basis that they are responsible for workplace health and safety.

CHAIR: It is always very easy to link any action at a mine to IR, is it not? That gets them around the corner.

Ms LEAHY: Thank you, Mr Macfarlane, and your team for coming in to see us again. It seems to be a very regular occurrence. I come back to your comments in relation to the civil penalties. You mentioned that the issue of double jeopardy was not addressed. Can you expand on your comments about that and how it might occur? I am happy for you to take that on notice if you wish.

Mr Macfarlane: I am happy to address it, but I will also ask Judy to add to that. In terms of civil penalties, firstly, there was limited consultation in relation to this. Secondly, there is an overlap of two pieces of legislation where you could be prosecuted under both. I am going to ask Judy to expand on that.

Ms Bertram: Ms Leahy, I think the issue is more that a civil penalty cannot be issued after a conviction for the corresponding offence, but there is nothing to prevent a prosecution following a civil penalty. That is the issue that we are talking about in terms of double jeopardy. The whole issue

around civil penalties is that there has been very limited consultation. It is a very significant change. We are talking about an important compliance framework ranging from education and awareness through to prosecutions and then civil penalties are now popping out at the end close to prosecution with the potential to impose substantial fines and, in some case, even more than the prosecutions deliver.

Ms LEAHY: Can you provide an example to the committee where you have concerns that that could occur? It is hypothetical, I know, because the legislation is only proposed at this stage.

Ms Bertram: The areas in which they can be imposed have been set down, but our concern is the analogy of the Work Health and Safety Act where there are civil penalties but they are more of an administrative nature. They are significantly lower in ultimate dollar value. With the proposed legislation, there could be civil penalties of up to $126,000, which is a lot of money.

Ms LEAHY: What do you see as the solution to this issue that has not been well consulted with the industry?

Ms Bertram: We are concerned that the justification is put back to the consistency of the Work Health and Safety Act where the ethos around these civil penalties is very different. They are more administrative in nature. We are asking, 'Are these really needed?' You cannot cherrypick and say, 'This is consistent with workplace health and safety' where it is not.

Ms LEAHY: That brings me to my next question. As you went through the 15 matters that are identified in this bill, there were some areas where you said the bill aligns with workplace health and safety and some areas where it does not. Could you give the committee a list—and I am happy for you to take that on notice—of where it aligns and where it does not align so that we can sit there and match that up very clearly?

Mr Macfarlane: I will take that on notice. We can do it now, but it would be quite time consuming. We will take it on notice.

Ms LEAHY: I think it would be better if we give that on notice.

Mr Macfarlane: Okay.

Mr CRAWFORD: I have no questions.

Mr PERRETT: I thank the members of the Resources Council for being here today. I had some questions about civil penalties, but I think that you have covered those and I note your concern. I think you mentioned—and I do not think these were your words; it is from what I have worked out—a tenfold increase in what you believe may be appropriate, I think 100 penalty units. Why do you think such significant penalties have been proposed in this legislation?

Mr Macfarlane: We are not sure. One of the things that concerns us is a view that seems to be coming through from the legislation that workplace health and safety can be dealt with just by imposing huge penalties. We do not accept that proposition for a start. There is no evidence to say that large penalties work.

Secondly, the best way to deal with workplace health and safety is through a framework, through a clear set of guidelines, and through ensuring that education and training takes place at all levels. That is a far better approach than just going in with hefty fines to suggest that you can solve all the injury problems and all the other associated issues under workplace health and safety just by fining people if they make a mistake. We do not have a problem with minor indiscretions being dealt with through penalty points—up to 100 points—but, as I say, thinking that you can eradicate accidents in a mine simply by having huge fines is erroneous and there is no evidence to support that.

Mr PERRETT: The other area that you touched on earlier was about the regulatory impact statement. It was for 2013 and we are now in 2017. It is four years later and there have been some changes, or significant movement within the industry and within the government, particularly on the back of coal workers' pneumoconiosis. I note your comments that it appears that the industry is going to implement some of what you believe will be the proposed changes in legislation. Could you expand on the fact that it is four years since that process and whether there are other areas that perhaps should be considered in a regulatory impact statement that would provide better guidance to the minister and parliament with respect to the adoption of legislation? I also note that you have been here regularly. There has been significant change and—who knows—there may be more changes.

Ms Bertram: Since 2013, that was the first RIS. To harmonise any legislation on a national basis is extremely complex. Every state believes that they have the best legislation, so the process is fraught with some difficulty right from the start. As you have mentioned, there was then a 2015 consultation paper that refreshed some of the things that were raised in the 2013 RIS but with a

different government. Virtually, since that time we have had the onset of coal workers' pneumoconiosis as well. A lot of the effort has been, I would say in fits and starts, redirected at times owing to coal workers' pneumoconiosis.

It would be good to start from tors to review all of the aspects. We recognise as well that there are some things in here that are timely to progress. As Ian mentioned earlier, changing legislation is often a very lengthy process and there are a number of things in this proposal that we believe should be progressed.

Mr Macfarlane: The bottom line to all of these changes is that we have a rigorous RIS. A regulatory impact statement is just that. If governments start to push through regulatory impact statements, or allow them to become dated and then implement legislation you have two things: you have an enormous cost on the industry, which often has no impact on improving, in this case, workplace health and safety, and you have unintended consequences, which can complicate the implementation of what you are trying to do. Our view is that you should always ensure that your RISs are up to date and that they are done properly. We have seen a number of examples across a number of pieces of legislation of late where RISs have not been done properly or, in one case, not done at all.

CHAIR: How do you do that to make sure that they are always up to date? The action is usually motivated by something that happens on the horizon.

Mr Macfarlane: I accept that political expediency is part of the real world. I am not taking an unrealistic approach to this, but I think that the government of the day has to ensure that their RISs are reviewed when the legislation is prepared for submission to the House. Where they have been extensive and where the industry still aligns with them, a reasonably short consultation can take place. Where there has not been a RIS, or there has been a start to one and it has not been completed, then I think that the government has to accept that that is going to slow down legislation. That also is part of it. On the one side you have political expediency—and I understand that the public has the expectation that the government can fix things overnight—and on the other side we need to make sure, as I said in my opening comments, that as legislation is introduced and stays there for a very long time and is often hard to change, we need to try to get it as right as possible.

Ms LEAHY: I am not sure if you heard some of the comments that we had earlier from the department.

Mr Macfarlane: No.

Ms LEAHY: We were exploring the inspectorate powers, including the inspector's ability to enter workplaces. I urge you to check the *Hansard* record on this. It appears that, under this legislation, the inspectors would be given the power to enter a company's workplace, not just in the field but also head office, and seize documents without warrants. Can I get some indication from the Queensland Resources Council as to its feeling whether that goes too far, or the thoughts of its membership?

Mr Macfarlane: We are not opposed to the ability of an inspector to be able to gather whatever information he or she feels they need to gather. We are not sure that the existing legislation does not cover that. In fact, we are not convinced that it does not. I should say that we are convinced that it does. This expansion is not, in our opinion, totally warranted but, for the sake of better outcomes, we support it in principle.

Ms Bertram: They already have those powers insofar as the investigation is linked to the incident, or the safety case.

Mr Macfarlane: Provided the inspectors are seeking information in direct relation to an incident, we have no difficulty with access being provided.

Ms Bertram: We understand that the changes in part link back to an incident where there was difficulty seizing some plant in an industrial estate in Mackay. We understand the links with the Work Health and Safety Act when these inspectors are required to go off the mining lease generally work pretty well.

Ms LEAHY: Do you think there should be some protections in place, though? Obviously if inspectors are seizing documents they may come across other commercial-in-confidence information of particular companies. Should there perhaps be some protections in legislation if there is untoward release of information somewhere or where some documents do not get shredded that might not be relevant? Do you think there should be some protections for companies?

Mr Macfarlane: We would expect that in an investigation that issues relating to privacy and to commercial-in-confidence where they are not related to the specific incidents are treated absolutely confidentially. That is fundamental to the rules as they apply now. I do not have an instance where that has not occurred, but if there were an instance I am sure that there would be questions asked. My understanding is that information in relation to privacy and information in relation to commercial-in-confidence which is not relevant to the inspector seizing information is treated with complete confidence.

Ms LEAHY: The legislation removes some of the exemptions for opal and gem mining. I do not think opal and gem miners are members of the resources council?

Mr Macfarlane: No, they are not unfortunately—or fortunately, I am not sure!

Ms LEAHY: They are very different organisations. They will obviously have some additional costs and paperwork requirements and compliance requirements, so could you perhaps give the committee an idea of how this legislation may increase costs and compliance?

Mr Macfarlane: I cannot comment on that industry.

Ms LEAHY: Maybe not commenting on that industry but in relation to your membership of the Queensland Resources Council?

Mr Macfarlane: I do not think we have costed it.

Ms Bertram: I guess that is harking back to the issue about an up-to-date RIS. An up-to-date RIS would normally assess the cost implications of what has been proposed.

Mr Hansford: The only thing I would add to that is that for the 2013 RIS we did quite a lot of analysis of the impacts, but it was lumped together as a range of things proposed in regard to statutory tickets, et cetera. Teasing that apart would not be all that simple. We certainly did not look at anything to do with opal mining. Potentially there would be some information there in that regard, but we do not have that to hand but are happy to look at that and provide what we can.

CHAIR: I will just go back to the release of information, a different line. The bill enables information to be released about accidents including serious accidents and high potential incidents as well as any incident or other matter that may be relevant to a person's compliance with safety and health obligations. Additionally, the bill provides that no liability is incurred including the defamation by a state or a person publishing the information included in a public statement where the action is done in good faith. Does the QRC have concerns regarding the release of information about accidents including serious accidents and high potential incidents as well as any other incident or matter that may be relevant to a person's compliance with safety and health? Do you have any concerns and, if you do, could you please outline what they are?

Mr Macfarlane: We support the release of information. We believe that every incident that occurs has the potential to improve safety as a result of that incident, tragic though it may be. We do support the release of information but, as I say, in relation to privacy we expect privacy to be protected. Where information is not related to that incident, particularly information in relation to commercial-in-confidence, and is discovered as part of the investigation, we expect that information to be held in confidence.

Ms Bertram: The QRC has always argued that any information that can be released early should be so that any incident of a similar kind is avoided throughout the rest of the industry, but there needs to be adequate protections around the release of the information, as is understood at that particular point in time.

CHAIR: Are you confident in the way you responded that that is happening across the industry at the moment? Do you think we are getting full cooperation from some of the mine sites with regard to a serious incident?

Ms Bertram: I think you need to look at why some of the mine sites are reticent at times to release information if it can be used against them in a prosecution down the track. I think some of these protections are what is needed to ensure that companies feel able to release the information and that it will not be used in an adverse way down the track.

Mr Hansford: Again, in the 2013 RIS this was proposed and the QRC even suggested going a bit further and having tripartite investigations so that the issue of legal privilege was less of an impediment, that all parties could investigate the incident as openly as possible and share information as quickly as possible, because that is how we will improve the safety framework by learning where it went wrong in the first place.

CHAIR: I am a bit concerned that you are suggesting that if a company is concerned that information relevant to the incident might incriminate them, are you saying that they should not be allowed to release that?

Ms Bertram: No. We are saying that the companies are generally keen to release. It is the legal privilege issue.

CHAIR: To get the best outcome from an inquiry into an incident, everybody has to be answerable.

Mr Hansford: As I said, the QRC had a proposal that could assist that. It might be worthwhile having a look at that as well so we can provide that part of our submission from 2013 as well. It might shed a bit more light on it. I am sorry, I am a bit sketchy on the details; it is a while ago now.

Mr Macfarlane: We might provide that on notice. We agree that the appropriate release of information is crucial, not only to ensuring that the incident does not occur again but where there has been mismanagement that that is dealt with as well.

CHAIR: Does the QRC monitor those type of things when there are issues, where there has been an incident, where there may be some reluctance to hand over information? Do you have any powers to direct them or anything?

Mr Macfarlane: We can only suggest to our members, but I am not aware of any incidents, certainly not since I have been chief executive of the QRC. But our advice to members will always be to comply with requirements

CHAIR: Sometimes I wish I could—

Mr Macfarlane: You are always free to raise an issue with the QRC in confidence if you feel in your daytime job as the member for Mirani that a company is not playing the game. We are always happy to sit down with you and discuss it.

CHAIR: Thank you for that invitation. Under your guidance I would feel more welcome than I have in the past. I will take on board what you have said. Are there any more questions?

Mr PERRETT: In relation to the commissioner for mine safety and health, Kate du Preez spoke about the tripartite process that is in place and gave us her thoughts on this legislation, particularly her role. We touched on the interaction with companies and employee representatives and the like. How do you interact directly with her and are you happy or confident that the process that she has in representing those issues back directly to the minister works?

Mr Macfarlane: We do meet with her regularly and we do have informal discussions with her even more regularly. As we view the process, we believe her access to the minister and her advice is a good line of advice.

Mr Hansford: I have had a fair bit of involvement with the advisory committees over a number of years and my observation is that since the new commissioner has been involved some of the previous concerns that there was not always exactly a clear pathway of what advice went to the minister and what the minister's comments were, that seems to have improved a lot. That alone makes the committee's job much easier and adds value.

Ms Bertram: As the commissioner mentioned, she provides an independent role and is also a great advocate for safety throughout mines in Queensland.

Mr PERRETT: I am interested in the fact that with the change in legislation her role is important in identifying and resolving some of the issues that may be presented. She obviously has significant powers as she can commence prosecutions and the like, but presumably that would be a last resort for that sort of role. Given that there is a change of legislation, are the processes that you mentioned before within existing legislation sufficient to deal with these? Perhaps if they are handled differently or more appropriately, that is why I sought comment with regard to that very important role with existing legislation.

Mr Macfarlane: The QRC has every confidence in the commissioner and we, and I, are very impressed by the way she has taken on the role. We think she is able to do what needs to be done and in many instances able to do what needs to be done without extra legislation. That goes back to some of my comments in relation to the necessity or otherwise of some of the components of this legislation.

CHAIR: Given that there are no more questions, we will close this session. We have three questions on notice.

Mr Macfarlane: One in relation to what we do and do not support, one in relation to the tripartite—

Ms Bertram: And the consistency of work health and safety was the other one.

CHAIR: Is 3 October okay?

Mr Macfarlane: Yes.

Mr Hansford: Our experience is that we usually get those questions on notice very clearly from the secretariat.

Mr Macfarlane: We might try and have them to you by the end of the week just to be safe.

CHAIR: I think that is probably the best thing.

Mr Hansford: As soon as we get the questions, we will get the answers to you.

CHAIR: We have no complaints about the way you handle it. Thank you for being here today.

Proceedings suspended from 10.57 am to 11.16 am

DALLISTON, Mr Greg, Industry Safety and Health Representative, CFMEU Mining and Energy Division

HILL, Mr Jason, Industry Safety and Health Representative, CFMEU Mining and Energy Division

WOODS, Mr Stephen, Industry Safety and Health Representative, CFMEU Mining and Energy Division

CHAIR: Do you have an opening statement?

Mr Dalliston: The CFMEU Mining and Energy Division, the union, thank the Infrastructure, Planning and Natural Resources Committee for the opportunity to appear at this committee and present its case on the Mining Legislation Resources Safety Amendment Bill on behalf of Queensland coalmine workers. While the union has in principle support for the majority of matters raised in the bill, the union has a number of concerns in relation to the making and the content. The Queensland mining legislation has been recognised throughout international mining circles as mining's best legislation in place to protect mine safety and health of mine workers.

The union's first concern is the process used for the development of the proposed changes to the legislation. When the 1999 Coal Mining Safety and Health Act was made it was developed through a tripartite process and based on the concepts of how the objects of the act were to be achieved through consultation, cooperation and competent persons representing the parties to the industry. Until the last three governments, the Bligh through Newman and now Palaszczuk governments, this process was utilised for any mining legislation process changes. During this time a number of senior mining electrical and mechanical inspectors based in the department assisted the chief inspector with these legislative changes and other matters. This has not been the practice during the terms of the previously mentioned governments. The Coal Mining Safety and Health Advisory Committee was recently informed of the government's proposal to have all review of legislation changed from the current 10 years to a five-yearly review. This is a process change in the department from having mining experienced people assist in reviews to having a separate policy division of the department. It has been explained to the advisory committee this process may take up to 18 months for a process to go through without tripartite participation.

The recent remake of the Coal Mine Safety and Health Regulation done through the process was fraught with mistakes which were fortunately rectified in a hastily called meeting. The union believes the review process for the mining legislation should be reviewed, agreed and documented. Since the 1921 Mount Mulligan explosion which killed 75 mine workers in Queensland, Queensland has had separate coalmining legislation and after the 1994 Moura No.2 explosion the legislation was changed to a mixture of risk based legislation with comparison against the Queensland Workplace Health and Safety Act. Some may say the coalmining legislation is written in blood. The Queensland coalmining legislation is used and applied in a practical way every day to attempt to ensure coalmine workers and their supervisors are competent and are provided with a safe place of work and adequate and effective work processes.

If it was not for this committee the industry operators and employees' representatives would not have had a chance to input to the content of the bill. The current bill, while containing a number of matters to be changed, contains wording that, if implemented, would have adverse effects on coalmine workers' health and safety. The union believe there are a number of matters which have not been considered in this bill and some matters which should form part of the bill. These are the legislative review process, safety and health management systems, management structures, site safety and health rep selection and powers, industry safety and health representative functions and accident investigation processes, inquiries and compliance and prosecutions.

A number of direct matters have been included in the CFMEU's written submissions. In relation to safety and health management systems, there is a current requirement for the mines to hold records under the mine record and other maintenance activities, yet there has been considerable debate as to what stage the chief inspector has issued correspondence stating the department believes it forms part of the safety and health management system. To remove all doubt the union believe the mine record and all maintenance records should be clearly stated at section 62 as forming part of the safety and health management system.

As to management structures and wording in section 42, the obligations of the SSE, sections 55 and 56, while some changes are proposed, the union does not believe they will address the matters that have arisen to date in the day-to-day problems. The union believe an additional

position, that of mine manager, should be re-inserted in the legislation for open cuts with a requirement for a certificate of competency. Currently the only certificate of competency required in a surface mine is that of an OCE who, in most mines, is not even mentioned in the management structure. The position of SSE is proposed to have some slight changes, but currently do not require mining competencies. A number of OCEs are currently employed either through contractors or through labour hire and as such are afraid to take necessary action on safety matters in fear of their jobs.

In relation to site safety and health reps, there has been a problem with the site safety and health rep election process since the changes were made in the legislation to take away the workers' rights and include the SSE in the process. This has held up election of workers representatives and is an added cost to the government because the government pays for those elections through the AEC. There is a process for workers representatives and the union believes that the process should be similar to that of the Workplace Health and Safety Act. SSHRs powers should be changed to allow them to copy documents, currently they are allowed to view but not copy, and participate in accident investigations. They should also have the power to hold an incident site until all the evidence is gathered before a full investigation be conducted. At the moment the inspector does that remotely without even seeing the site. No-one actually sees the site before the SSE can interfere with an accident site.

In regard to accident investigation compliance, in a recent prosecution matter in the Magistrates Court the magistrate asked the question as to why a company which had had two fatalities within seven months at their operations should not receive the maximum penalty available under the Coal Mine Safety and Health Act. This company had a third fatal accident within two months of the second fatal accident. In the case of the third fatality, the operator and the SSE were not considered for any prosecution, but the contracting company had action taken against them. The union believes that the process for investigating fatal accidents and gathering evidence by the inspectorate should be included in the legislation review and the jurisdiction as to where these go should be reviewed similar to the Workplace Health and Safety Act or New South Wales mining cases. In the case of the third accident and other fatal accidents, the ISHRs have been refused access to significant documentation to a level that we could not write a report on the fatality. BMA senior officials have stated there should not be any third party interference in their mines with reference to the ISHRs and the inspectorate.

In relation to inquiries, the corner's inquiries have replaced the 1925 act warden's inquiries and are held after each coalmining fatality. In the union's opinion they take too long to be held and are costly and do not deliver the relevant recommendations for the family or the industry in a timely manner. The warden's inquiry was removed in the 1999 act after the government of the day believed it had deficiencies. The union believe that a similar process should be reinstated in the legislation. The union believe that while we have good legislation it is only as strong as compliance of enforcement standards to deliver mine safety for mine workers. While there have been a number of changes recommended over CWP, there is no proposed change to include any legislation in regards to the Health Surveillance Unit of the inspectorate in the legislation stating their roles, responsibilities or funding.

Finally, on a personal note, we believe that if there was another explosion or mine fall in an underground mine in Queensland today the same decision that was made at Box Flat at Kianga and again in 1994 at Moura where the bodies had to be sealed in the mine would still have to occur because legislation to this day still does not allow that area of the mine to be sealed without sealing from the surface. In my position I had to make that decision in 1994 and I hope no-one has to make that decision in the future. The legislation needs to be changed to stop that from happening. Thank you.

CHAIR: One of the first questions I asked a couple of sets of witnesses here today was about the time that it has taken for the committees and all those involved in the review of the legislation to come up with these amendments to the legislation. What is your view on why it took so long?

Mr Dalliston: The legislation was started with the national mine safety framework way back under the Bligh government and then it went to the Newman government. The Newman government didn't take a tripartite approach, they only sat with BMA and the chief inspector and actually drafted the RIS which was released. That was stopped because of the election period for the last election when the Palaszczuk government was elected. We saw the minister straight after that and asked what has happened with the RIS, is it going to be still kept in place from the last government or is it going to be gotten rid of and are we going to have a new process. It has taken until now, the end of this term for this government, before any action has taken place. Through the advisory committee we have been asking for legislation to be reviewed. In January this year they finally called a tripartite

committee together to review it under the department. We had two meetings and we were instructed that the decision had come from the Premier's office that all work on legislation was to stop. We have done nothing after two meetings in January 2017 until we found out by mistake that this bill was going to be done. We have had no input since February this year until when we heard this bill was coming out a few weeks ago.

CHAIR: Have there been changes in the way the clauses have been written since you had your final discussions on it?

Mr Dalliston: Under the new process there is a policy division of the mines department now. There are three sectors. One is the Mines Inspectorate and one is policy and those policy people now write the legislation. Before we had tripartite meetings with mine managers, ourselves and inspectors. We sat on there and looked at what we needed to change. We went through risk management processes and tried to have debate. We only had two meetings of that under this process and the things that were given to us by the department were the things they wanted to change. The QRC put up a number of issues and we put up I think 18 prime issues of concern. Some of those relate back to 2009 when we did the last review which has never been implemented.

CHAIR: I put it to the QRC that some of the companies had to be dragged kicking and screaming with regard to some of the changes that have been put forward. Was I right in doing that?

Mr Dalliston: The QRC wanted certain changes. They wanted our powers removed. They wanted to have control over the election of site safety and health representatives, they wanted to have control over fitness-for-work policies—at the moment you have to get agreement by the workers at the mine: a majority. They wanted to change those. They wanted to take out the reverse onus of proof. They wanted things to make it easier for them, but the main things like changing the management structure—BMA sent a lawyer. This is the first time ever I have been on a legislation committee since 1992 where I have had a lawyer attend on behalf of companies instead of a coalmine worker. BHP put up a lawyer and Andrew Clough, the ex-chief inspector, came. They were the two representatives for the QRC. They had to go out of some meetings. In relation to putting water barriers back in to stop explosions, Andrew Clough had to walk outside and have a talk to the lawyer and come back in and say the QRC now agrees. The position was clearly an ideological position rather than a safety and health position. Any of the changes that we tried to get which would increase safety for workers, especially in this day and age with labour hire and contractors where there is a big fear from those people so they need some proper legislation written, was all rejected by the QRC members.

The Mines Inspectorate would only support anything where we could both agree. If we could not agree, they were not going to make a decision on some of the things they needed to have: competencies of SSEs, management structures for open cuts, statutory tickets. They would not make a decision on any of those so therefore most of those are not in the current change.

CHAIR: Why would they want to go down that path?

Mr Dalliston: It is the easy road out, I suppose.

CHAIR: But does it not have an impact on the standards of safety that we have put in place?

Mr Dalliston: Definitely. Us three are not only employed by the CFMEU, but we are employed under the coalmining legislation. One hundred per cent of our role is to do with safety and safety matters—safety, health and training—in the legislation.

CHAIR: You mentioned labour hire a few minutes ago. Do you want to go back to what you were talking about and give us more detail?

Mr Dalliston: The issue is open-cut examiners. It is the only statutory position in an open-cut mine now. It is the only position that is required to have any mining competencies. The mines are allowed to determine all of the rest of their competencies themselves. That is why the management structure is a big issue. It has been an issue for about five years. We have some mines where most of the permanent workers are labour hire. There are no coalmine workers employed, say, at Grosvenor except for the statutory officials. The rest of the people at that mine are employed through labour hire. They are on a day-to-day hire. Most of those people will not speak up about anything. They will go to a safety representative who is elected, or they will go to their deputy and raise some safety concerns.

In an open cut, we have had a person who is very strong on safety. He worked at Collinsville for a long time. He is working at a BHP mine. He is an OCE. He has to go to one of the other OCEs or the site safety and health representative after he writes a report if they do not action his report. He is not going to keep pushing it. He has applied for a few other jobs as a permanent and cannot get

one. They are keeping him on as labour hire. He does not believe that he has the long-term job there to be able to raise those safety issues. He raised them the first time—he wrote them in his report—but he is not going to push them any further.

A lot of those do not get the same induction. That is why I am glad to see that some of the changes that are in here are for an induction for contractors and labour hire. If we get some changes in these words, which we have put in our submission, then at least the safety and health management system will be one where workers will have to use the mine's one rather than their own. In some cases we have had drug and alcohol tests put on people where the contractor company does it and, if you do not do it, you do not have a job even though the mine has a system that, in our opinion, is better.

CHAIR: We heard earlier from the QRC. Mr Macfarlane painted a pretty good picture of the attitude of mining companies towards safety at the mine. I am a little bit concerned about what you are saying here. It is not as rosy as it sounds. Where is the problem? Do you guys not get on, or something?

Mr Dalliston: No. We are there 100 per cent for the safety of the mineworkers and to make sure that the workers get represented in safety and not get exposed to an unacceptable level of risk. We had a mining company turn up to develop a recognised standard and their representative said that his job is to push the boundaries as far as he can on the legislation as long as productivity is occurring.

The dust was a good example. We had inspectors go to mines where the dust levels were twice the legal limit and they did not stop those mines from operating. The mine knew that it was dusty. The inspectorate knew that it was dusty. These two boys went out—and they will talk to it—to a mine that was shut down while they were there. Before they even got off the mine site—when they were back on the surface—it started back up again.

A good example would have been last week when we had miners for memorial day. On 19 September—last week—we opened a new memorial out near Ipswich. Have a look at how many people from the mining companies turned up. Ian Macfarlane turned up, yes, but there were not any mining companies represented at that. Mineworkers from Central Queensland came down for that, but there were not any representatives from Anglo, BHP, Peabody. New Hope was represented. That just shows the attitude that they really have. It is about production.

CHAIR: Do you guys want to add to that?

Mr Hill: I will add a couple of things. You talk about the safety side of things, which is really worrying. You talk about the last explosion that we had at Moura. We have not been that far off having another one when you look at all the incidents that have lined up, or near misses, as they call them. I will go through a couple. Just recently a deputy signed off on his inspection report to say that he has inspected an area that he had never inspected. There were coalmine workers working in that area. At the same mine, a deputy came in to start producing on the shift without doing a handover. There was a ventilation change on the shift before. They did not have the quantity of air to start cutting, especially at that pit because it is a frictional emission pit. That was probably the biggest hazard.

With these coalmines, the dust sampling regime has come in since 1 January. We go to the second quarter and the companies could not even be bothered sampling. They did not report the sampling. To me, that does not show a rosy picture. That shows contempt for what the legislation is there for. You have the deputies still walking and talking now, even though they really put the coalmine workers at risk. They cannot comply with what is happening.

Mr Woods: I know that Mr Macfarlane paints a pretty picture, but why does the chief inspector have to put out a letter to the industry saying that labour hire people are supposed to be provided with PPE and Coal Board medicals only this year? If it were the same for everyone, how come he has to put out a letter and say that the department is going to enforce that?

CHAIR: In your roles do you communicate with the QRC at all on these issues? I am just picking up on things that have been said earlier.

Mr Dalliston: There is a report written for every inspection that we do at a mine.

CHAIR: Does that go back to the QRC, though?

Mr Dalliston: No, it goes to the manager of the mine, or the SSE at the mine. It goes to the mines department—to the inspectorate. We mainly talk through the advisory committee. There are three representatives of the CFMEU, three from the advisory committee and three from the government who sit on the minister's advisory committee. I have had one meeting with Macfarlane

since he came in and that was a couple a days after he took over the role from Michael Roche to try to get a better attitude. In his speech last week he said that he has a good relationship with us. It could be better. You could have a good relationship with your wife when you do not see them. That is easy, too.

Ms LEAHY: Mr Dalliston, I was interested in your comments about the RIS and that it was not completed under the current government. Do you think that the completion of the regulatory impact statement would be of assistance in taking a lot of these things forward?

Mr Dalliston: We were totally against it. We put a large submission in to the RIS. It cost us a lot of money. Before, we used to sit down and discuss things like that face to face. Then you got the issues and then you got the answer back. Under an RIS, it goes out as a document. The department talks to the QRC and the department comes to talk to us. They do not talk to us together, so we do not hear the other side and they do not hear our side.

We had a lot of problems with what was in the RIS. We know that it was written between BMA and the then government. We were hopeful that the current government would have thrown that out and opened up the tripartite process to review some of those matters. There were a number of matters in there that we agreed with, but the outcome of what they had in there we did not agree with. There was a matter, yes. How they wanted to fix it, no. We have been asking for whatever time this government has been in place—a couple of years—to get that done.

We know that dust has been an issue that took over the world, but there was still room to keep moving forward on those other issues. There are a number of issues in the RIS. There are statutory certificates in the RIS that we agree with. There is getting rid of our powers that we do not agree with. There are a number of things. The things that we agree with, some of those are in this bill—like making the operators have functions and obligations under the act now and the powers of the officers of the company. That is the same as workplace health and safety has. It is the same as New South Wales has. We cannot see why we would not have the same.

We also did the national harmonisation through that period as well. That has never been implemented in Queensland, either. As union representatives on the national committee for OHS, we spent five years with no outcome. We would have been better off going to the mine and doing inspections.

Ms LEAHY: I am happy for you to take this on notice. The bill attempts to address 15 different matters identified for improvement. Could you give us a list of the ones that you agree with, or the ones that you are not happy with?

Mr Dalliston: Yes. I have some paperwork in my bag that I can give you for that. We put up our position on the matters in those first two months—in January and February. We did not agree with one of the parts of the officer's duties. We believed that the reverse onus of proof was still in the legislation and some people were asking for it back.

In principle, we agreed with all of the matters that they put forward, but, for example, with the change in the safety and health management system, we had two fatalities. We had a tyre fatality at Foxleigh Mine—Shane Davis—and not long after that we had a fatality with Jason Blee at Moranbah North. After that, the coroner recommended that the mines had more than one safety and health management system. The word 'single' went into section 62. This has changed it around. They have taken it out again. We have had a coronial inquiry, a lot of work done, it went in, and now it has been taken out.

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

For probably the last five years there have been problems with what a safety and health management system is. We have got a legal process. Everyone knows that it does not mean what it is supposed to mean. Again, they have left out the changes that are required to make sure that mine

records and maintenance records are part of the safety and health management system. When you have an accident, we cannot go and get that information, because they say that it is not part of it. Some do. The better companies give it to you. The other companies that do not want to will not give it to you. There are a number of things in those 15 issues that we do not believe have been dealt with properly and that is because they were dealt with by policy people rather than people who knew what the problem was.

Ms LEAHY: You do not think that some of those things will be dealt with by regulation? By what you said earlier, you have been a bit left out of the consultation.

Mr Dalliston: I sit on the advisory committee and I also sit on the board of examiners. We get that information from wherever it is coming, but the regulation was just rewritten last month and there were, I think, 19 mistakes in that. I have raised our issues with the chief inspector and on most of them he agrees. He said he cannot raise a couple of them against the department because he is an inspector. For example, the new regulation makes the chief inspector of metalliferous and the chief inspector of coal automatic members of the board of examiners, which gives out statutory tickets for all of the other positions. The government has just made some ridiculous decision that, to be the chief inspector of metalliferous mines, you do not need a first-class metalliferous ticket. Here is a board that gives out first-class tickets. The only ticket it gives out for metalliferous is a first-class ticket, yet the chief inspector of metalliferous does not have to hold that ticket. But he is an automatic member of the board. We do not believe people understand the changes they were making by putting in those words. If we had proper consultation where we sat down together, we think that some of those could have been fixed. Now, we have a bill sitting in parliament that has had a first reading. We would not have had anything, except we have come here today to express our concerns.

Ms LEAHY: Are there any other issues like that that you have identified?

Mr Dalliston: Yes, they are all in our submission. The submission deals with all of them. All of the clauses in the submission that we deal with are where we have an issue. The ones that we do not deal with, we believe that the wording that is proposed would be all right.

Ms LEAHY: Thank you very much.

Mr Dalliston: But there is a pile of other things that we submitted that have not even been discussed.

Ms LEAHY: Okay.

Mr CRAWFORD: I want to drill down a bit more on the contractor provisions. Stephen and Jason, you travelled the state when we were looking into coal workers' pneumoconiosis. You heard all the public statements made by different workers out there about what they saw and felt in relation to how contract staff were treated. Does this bill fix some of those issues in respect to the contractor provisions?

Mr Hill: On the principle of it, I believe it will help.

Mr CRAWFORD: Does it go far enough?

Mr Hill: I suppose it is hard to say, because everything gets so legal. It depends on how it will be interpreted and enforced. In a way, it does with the inductions, processes and the safety and health management systems to alleviate it. Everyone is working on the same path but, then again, I do not know if it addresses fear for jobs being taken seriously and about making complaint, that sort of stuff. That is the big issue with people being able to feel safe about saying, 'I have an issue here that we need rectified.' I do not know if that fixes that area, especially as Greg was talking about. If you have statutory people in charge of your safety and if they are not going to raise a safety issue, that is a big concern. If we cannot alleviate that, we are waiting for more accidents and incidents.

Mr Woods: I agree with Jason. I think it goes part way to fixing some of the issues you would have heard on the road, but I do not believe it goes far enough.

Mr Dalliston: There are two examples on that out of the last few fatalities, worst luck. There is the case of Ian Downes' fatality at Grasstree where the roof came over. He was a contractor working for Valley Longwall International, putting up gas bearing stumps. The new legislation proposes that the contractor put a safety measurement plan to the SSE and the SSE would have someone—because he will not do it himself—integrate that. The night after that fatality—the three of us were out there—the Valley Longwall International people were not allowed back on site, none of the contractors including their management people. Their computer was still on site and the safety manager for the mine who would be responsible under this new piece of legislation for that rang the contractor supervisor, got the password of his computer and downloaded the documents that they should have

had in their management system to stop that accident from happening. We asked for a prosecution. The government did not believe there was enough evidence. The government accident investigation processes are not real good, so we need some legislation on that. But we could not get a prosecution against that person after the fatality occurred. This person then went to another mine and changed some dust readings as a safety measure. You cannot touch him. He is in the safety of mines system but has no obligations except for section 39 under the act and yet he is representing and doing accidents that this new legislation is proposing on behalf of the SSE.

The other one was the Ian Hansen fatality at Newlands mine. Stephen and I did the interviews with the department of witnesses. Some of those blokes—they are all contractors—doing shutdown work will not go to certain mines. They believe the safety systems at the mines are that bad that and if they get offered work at those mines, they go fishing. Some go fishing on a boat rather than take up the work. He gets enough work from other jobs, but there are mines he will not go to. The same applies with dust levels. They wanted the dust levels to be made public so they could say that they will go to these mines and not these mines. There is a number of people out there who are choosing with their feet at which mine they will work because of safety management systems. You cannot get much more information than a contractor saying, 'I am not going to work there.'

Mr PERRETT: My question relates to the process. You touched on successive governments and obviously the election of a new government. Then there was discussion with the new minister with respect to this and, as I understood it, a couple of years and then nothing and then earlier this year some discussions. You seem surprised that this legislation has come into the parliament at this point in time. Given the concerns that you raised with some parts of the legislation and some areas that you think it has not covered off, do you think this legislation should be delayed until all your concerns are addressed?

Mr Dalliston: Yes. If some of the legislation comes into place now, some of it will be good. But do you put in legislation that still has holes in it and say that at least we have some, or do you say we should have fixed it first and then put it in? The issue is with another upcoming election, we know what happens there. It will be another six months—it does not matter who gets back into government—before we touch it again. If it has to go through another reading, it could be another year if we do not put this through now. But we believe we have put some reasonable proposals forward. It would not be hard to modify the current provisions. Do not touch on the new matters but at least modify what is there such as put the word 'single' back in. We need only a couple more clauses to make sure that not only the contract manager but those three senior positions are accountable. Some of those things would not be hard to change with the current wording and would take only a couple of days or a couple of hours. If we hold off, like I said, can we keep waiting for management structures to be changed? Nine out of the last 11 people killed were contractors or labour hire since 2008. In nine years we have killed another 11 people. What are we going to do? Our option would be to put what we have in place now but knowing that it has to be fixed. Some of it should be fixed before it goes in there; it would not be that hard. It is not a matter of rewriting the whole lot: it is a matter of a couple of changes.

Mr PERRETT: From your dealings through the CWP investigation—and obviously some of you are very much involved with that—there seems to be a lot of legislation coming in that deals with various aspects of mine safety in different areas. How does it all link? We obviously have existing legislation that you believe needs to be strengthened. Obviously some significant work was done by the select committee around coal workers' pneumoconiosis to deal with some very serious issues that have re-emerged or really did not disappear but still exist. Is this mine safety legislation starting to get too complicated? There are so many various aspects of it. Are you confident that it is going to deal with the fundamental issue of safety for mine workers?

Mr Dalliston: The mining legislation is not complicated. I have been working in the mining industry for 40 years and have been doing this job for 24 years. Ask me a section and I can tell you what section it is in legislation. I have done enough law exams. The law exam is not complicated. The law is not complicated. It is the will to apply it. The problem we have had especially with these blokes checking for six years now is that every time we write a mine record entry we get a lawyer responding rather than the mine manager. It is not that the laws are complicated; it is that companies are going more to a legalistic approach rather than a genuine safety and health approach. The legislation is pretty simple. It sets out who you are, your obligations, your roles and what you have to do and it then sets out the same for the worker. It is not that hard. A lot of it is risk-based. The mine can then look at what are its hazards at the mine site and work out whether they need to put this control or this control in place. They put those controls in place and still do not follow them. They do not put supervision in place to make sure they are applied. They do not train contractors in what they have,

because more contractors are coming in. You have to train people every day rather than permanent workforce who know the staff. The legislation is not complicated. It is the will of people to put it in place. That is what I believe.

Mr PERRETT: Surely some responsibility must go back to government and the department to oversee that. The legislation exists, but someone has to police it. It is all very well making accusations against companies but if someone is not enforcing it then surely that is a problem. I believe that the government and the department need to make certain that if those laws exist—and we heard earlier this morning from some of the representatives—they believe the existing legislation can cover off a lot of issues there now. Perhaps they have not been enforced. Perhaps CWP is a prime example. Perhaps there are other areas. That is why I ask for your comments about government's role and the department with respect to oversight and enforcement.

Mr Dalliston: I dare say you have been talking to the QRC, because those sitting on the advisory committee of the QRC keep coming back saying that the better mines are putting in this place now, why does the department not take action against the worse mines? The problem you have is management structure and what is happening with fatalities. The department has tried to take that on. We have a written mine entry records. Given our power at the moment we can write an entry if we believe there is something wrong. We can ask the mine to fix it. If they do not fix it and it is not immediately safe, it is a safety management system issue rather than something is going to fall on your head, we have to hand that to the department to look at. The department has had all of those and has looked at them. They have tried to take it on, but certain companies' lawyers have turned up to the department. The bigger companies have taken the department to court and said, 'We do not believe that is what the legislation says.' Now the minister has told the chief inspector to get the legislation fixed so it says what all the people thought it meant. And that is what some of these changes will do. They are to make sure that where there were holes from 2009 to now, those holes are patched up. A good example that is not in this legislation now is that the three of us have a power and function to go to any mine site in the state and talk to the SSE. If a new mine starts tomorrow, there is a requirement under sections 49, 50 and 51 of the act for them to notify the department. They do not have to notify us of a new mine start, so how do we know there is a new mine?

If we write a letter to the SSE about any changes tomorrow and the letter is sent back—I have had one sent back because it was written to the wrong person so now do not put a name but put it to SSE. There are small mistakes that you do not think mean much but in terms of a legal standing they mean a lot. It is not big issues and a total rewrite of the act; it is the things where the problems have been. Management of contractors is where we are killing people in terms of the safety management systems and getting access to documents before an accident rather than after. Some of those companies are 1,000 per cent against these issues and they are the ones who say, ‘The legislation is working good, why don’t you have a go at the other companies?’ The fact is that the government has told us, the inspectors have told us, that when they went to apply the dust legislation, Fritz, the IOM and our lawyers have told us that we cannot make them do anything, so they let them keep working in the dust until we get to all those changes. We are not trying to make change for change's sake. We are trying to make change where the holes have appeared in legislation through legal people looking at it and saying it does not mean this.

CHAIR: Your suggestions in your submission are focused on the legal—

Mr Dalliston: The current issues in that bill.

CHAIR: Your submission and all your comments in here with regard to the changing of some words, that is all it is at this stage. You do not have any other things to add to it?

Mr Dalliston: No. In our submission we only addressed the matters in the current bill. We have all the other things that we are dealing with in January and February. The coal mine safety and health advisory committee is starting its own review. We got sick of the government. Every time they start one like the RIS they get told that it is not ours because we thought the advisory committee would do that. We give advice to the minister, which is our role, and are told that it is an internal one. This one came around and, 'No, it is an internal one.' The coal mine safety and health committee have started their own review. We started meeting to get the process in place about a month ago. We have another meeting at the beginning of October. We will look at the effectiveness of the act and regulations and recognised standards, which is what we are supposed to do under section 76 of the act as a tripartite committee. That review is already proposed. It will probably take a couple of years to do but it will be one where the industry has input into their own stuff rather than getting told what we are getting. I dare say there will be some rigorous debate.

CHAIR: These changes in the amendment bill are not the end of it?

Mr Dalliston: No. We believe this is the start—

CHAIR: There is more to come with regard to the health and safety act.

Mr Dalliston: The department has serious concerns. We talk to them a fair bit. We do not meet with the QRC but we do meet with the government inspectors. They have told us that they have serious concerns over management structure, contract management, statutory positions and the safety management system, what it is and what it is not. We do not believe that you can have a mine record that says you must keep all your safety information there but when we get access to the safety management system it says, 'No, the mine record is not part of it because it did not say the mine record in section 62.' It says 'safety records'. They are the type of issues that happen with some of the big companies, BHP and Anglo mostly. The smaller companies do not seem to have as many problems. Linc is a problem, but it is not so small.

Mr Hill: At the end of the day, you look at the management structures and the management of contractors. You look at the fatality rate of contractors in an industry to permanent people. It is outstanding that contractors are the ones who are mainly fatalities. I do not know what would be the severity rate of injuries with those, but to me the management structure is something on which we cannot wait. Through the advisory committee, there is a subcommittee that is a recognised standard committee. We have been talking about a management structure for the recognised standard committee for a long time. The only reason that has not gone ahead is because there have been arguments and a bit of argy-bargy about whether it is going to be a recognised standard or a guideline. It is something that has been picked up and noticed for a long time about the management, especially in the open cuts, about the qualifications. You might have someone who was a baker yesterday managing drill and blast today because they do not have the competencies to do it. How the hell can someone who has not got the competencies to be a shot firer be in charge of drill and blast? That is something that has to be done and I believe it has to be done ASAP.

CHAIR: I think we could talk for a quite a while, but that is all the time we have for today unless you want to add something quickly.

Mr Dalliston: We know this bill has been put rather than having a tripartite discussion before it was put. With the regulation we got to see the regulation at the last minute before it went back into parliament to get signed off. This one has already had a first reading. What is the process with this one? I know there are sitting days next month and then probably the election will get called and we will not see this until the other side of Easter next year. Is there a chance to change this or does it have to be pulled out of parliament and re-done? We don't know the process for that.

CHAIR: Okay. There was one question on notice. Can we have that by 3 October.

Mr Dalliston: You want us to write the question out, what we want?

CHAIR: Yes.

Mr Dalliston: That is easy. We can do that this afternoon.

CHAIR: Thank you for your attendance. It was very interesting. Certainly you raise a lot of points that just cannot be looked over and not considered from this point on.

Mr Dalliston: Are the department giving any evidence? The inspectors?

CHAIR: We had them here for a briefing and they will be back later on this afternoon.

Mr Dalliston: Is that open?

CHAIR: Of course.

SLEIGH, Mr John, Vice-President, Northern Region, Mine Managers Association of Australia

TAYLOR, Mr Gavin, President, Mine Managers Association of Australia

WATTS, Ms Elizabeth, Committee Member, Northern Region, Mine Managers Association of Australia

CHAIR: Do you have an opening statement?

Mr Taylor: On behalf of the Mine Managers Association we wish to thank you for the opportunity to attend and present. We have provided a bio so I do not intend to elaborate on our qualifications. The association represents 420 members, 105 of whom reside in Queensland. Our membership, whilst mainly directed to practising mine managers, also includes a diverse range of senior management in the mining industry from chairman and directors of companies, mines inspectors, academics, consultants and senior technical managers.

Moving to the proposed amendments, we are happy to support all of the recommendations that are before us, however, we would in a number of the proposed amendments recommend that with some minor additional amendments that the effect of those amendments would enhance the overall impact of safety and health. On the ventilation officer competency, we are fully supportive of the requirement for ventilation officers to undertake a practical examination. Whilst the course is required as a prerequisite and provides excellent theoretical knowledge, too often there have been incidents of individuals not being able to translate the theoretical knowledge into practical application. The introduction of a practical exam will provide comfort that those charged with the management of potentially critical hazards have both the theoretical and practical skills to manage those hazards.

On advisory committees, whilst we understand the requirement to introduce a ministerial discretional path for the mines and quarry safety and health committee, we are of the opinion that this should never apply to the coal committee. It is critical in our opinion that all members be experienced in coalmining operations. We would go further and recommend that at least one of the three operator representatives be a practising SSE who additionally holds a mine manager's certificate or an underground mine manager. With all due respect to those Brisbane based personnel, their understanding of what is actually occurring at the coal face is at times divorced from reality. Further, any accepted changes from committee recommendations will eventually have to be implemented at the coal face and a practical understanding of what, if any, difficulties implementation may present is better addressed prior to enactment.

On the board of examiners, we are of the opinion that only those holding statutory qualifications should be members of the board. This is no different to any other body directing professional competence. It should be noted at this time that would not include the SSE qualification which is limited to legislative knowledge only and does not include safety and health matters nor the management of critical hazards. It is also important that an academic with current knowledge of course content at various institutes of higher learning is appointed so an assessment can be made of the prerequisite knowledge of candidates. Non-graduate candidates' theoretical knowledge is already known as the units of competency required are set by the board. It would be ideal, of course, if that academic also held a statutory qualification.

With regard to the register of competent people, we are totally supportive of that amendment. It will greatly assist operators ensuring job applicants are duly qualified for the positions applied for. With regard to cancellation or suspension of certificates, we fully support that proposed amendment. Our association is committed to ensuring that our members are competent and fully comply with the statutes. Any member who knowingly or wilfully breaches legislation will receive no support from our organisation. Our one caveat on that which is being proposed is that the alleged errant official should be judged by a body of their peers, that is the board of examiners, and only on their recommendation would the CEO act. We also appreciate that the individual concerned still has a legal right to refer the matter to an external review through the Industrial Magistrates Court.

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

more than happy, as we have done in New South Wales and New Zealand, to work with the department to outline our scheme and to elucidate the amendments we have made to ameliorate the scheme, those amendments borne from practical operating experience.

There are other concerns similar to what I heard in the public gallery which we believe should be considered to ensure Queensland legislation retains its place as best practice and we would appreciate the opportunity to discuss those considerations at some later stage. Thank you.

CHAIR: Your association takes in all mine managers. What other statutory officials come under that umbrella?

Mr Taylor: Under managers can join if they are in the senior technical division as an associate member rather than as a full member.

CHAIR: Would you see yourself, and you probably do not like the word but you are a representative of those people, as their union? I will take union back if you do not like it.

Mr Taylor: We have all been members of unions. Yes, if you wish. It is more than that, I guess, if you have a look at it. Mine managers around the world for a number of years have had various associations. In the United Kingdom, for example, it was the Institute of Mining Engineers. This association started in the Hunter Valley in 1942 basically to represent their members because of some issues that they had with the government and other people and owners at the time. Since the inception of that organisation we have always had technology transfer through papers given to maintain the competence of the individuals. We do that, as I say, through structured technical transfers or through just peer-to-peer review to make sure that our people are as competent as they can possibly be. That is the main goal: to ensure that competence, and also to lift their status within the industry.

CHAIR: Safety would be a prime issue with managers?

Mr Taylor: Certainly, yes.

CHAIR: I ask that question because I have had 35 years around the industry and I have never heard of the mine managers standing up for safety at a local mine. Why don't we hear about them?

Mr Taylor: You have never worked with them either.

CHAIR: You would be different?

Mr Taylor: I think my record would say I am different, yes. I think most managers these days recognise the importance of safety, and always have.

CHAIR: I think they would recognise the necessity of safety, but whether the culture allows them to be who they would like to be. You do not have to answer that.

M Taylor: I can. I am here to answer as honestly as I can on behalf of our members. I think clearly a lot will depend on the culture of the organisation that you work for—clearly—but a lot of managers drive their own culture at their own mine no matter what organisation they work for, sometimes to their detriment in the end.

CHAIR: You spoke about the advisory committees. It is critical that all members of this committee be experienced in coalmining operations. I totally agree with what you are saying, but why did you have to put that in? Is there a situation where we have people sitting on these committees who do not have that experience?

Mr Taylor: In the amendment you talk about having ministerial discretion to override that.

CHAIR: That is where you are coming from?

Mr Taylor: Yes. I can understand where that is required within the mines and quarries because the AWU situation where they don't always have people who have underground experience or experience, but what we are saying is that is fine but never should that ever roll over into the coal committee. The other issue that we are saying there as well is that when the ministerial committee was first set up—it was a council at that stage—I was one of the representatives of the operators. I was on the first one. Then when I left to go back to New South Wales there was another mine manager on there who continued for a while and now that has fallen away so you have no practical experience a lot of the time. Having sat on that ministerial committee later on and then listening to some of the things that were going on it was obvious that they really needed someone there who really knew what was going on on the mine site.

CHAIR: Why did that happen? Why did they get away from having that expertise there?

Mr Taylor: I think it was down then to the QRC and their members as to whoever they wanted to nominate to be on the committee. What we are saying is that there should hopefully be something written in there that says at least one of them has to be actually practising in the role at the time.

CHAIR: Good point.

Ms LEAHY: Thank you for coming in and talking to the committee today. I am looking at the outcomes of the examiners board annual report. On page 9 it looks at the number of certificates and competency registration, the number of passes and the number of fails. Why is there such a high number of fails?

Mr Taylor: It depends on whether that is the first attempt or the second attempt. What we have tended to find is that a lot of people fail on the first attempt basically because they are not used to going to an oral examination. You will find that if they work for a company at a mine that will actually give them some tutoring before they go there is a higher pass rate. I think the bigger concern for us is the actual low level of numbers of people who are actually sitting for their certification. There seems to be for us, as an association as we look around, less companies actually encouraging people to go through and train them to become the upper level of mine management working on the basis that they can get away with an SSE who does not have any qualifications at all from a legislation exam. I think it touches on some of the stuff I heard previously from the CFMEU. There is a paucity at the present stage of people across the industry who are actually qualified in a position to actually understand where the risks and the hazards are. If you can get the top job without doing all the hard work and the yards why would you bother? They are not training people.

Ms LEAHY: It is interesting to note that, with regard to the SSEs, for their written examinations they have a pass of nine and a fail of 35, so that is fairly high too.

Mr Taylor: I think if you go back to the beginning of the SSE examination, the pass rate was fairly high. It has dropped away and I think that is because anybody can go and sit for the SSE. A lot of people who are sitting for these examinations now will never be an SSE, so anybody can turn up and do that legislation exam.

Ms LEAHY: So why will there not be an SSE? If they are sitting for it, why would they not—

Mr Taylor: Anybody can go and sit it. They are probably not qualified enough in the company's eyes. Anybody off the street can go and sit for that SSE exam. You do not have to be employed within the industry to do that. The department can answer that better than I can, but from my understanding there is a lot of people at the present stage who really do not understand the legislation but are going to have a go at it anyway because it is another ticket to have.

Ms LEAHY: Thank you.

Mr CRAWFORD: In addition to the things that you have put in your submission, do you have any comments with respect to the rest of the bill such as the penalties and some of the other increased powers and things like that? Are you happy with it all?

Mr Taylor: No, we were comfortable with all of that, as I said, apart from the things we mentioned within our documentation. I think the only other thing that we were a little bit concerned about, as we have also mentioned in there—this was mentioned again previously—is that there were a number of other things that were being considered underneath that regulatory impact statement which went before the OBPR that we thought would assist to maintain the legislation at best practice and we were a little bit—not concerned—disappointed that they seem to have fallen by the wayside and a lot of that was to do with, as we have mentioned in there again, statutory qualification. We have a real concern within our association that we have a number of mines in Queensland where SSEs are not first-class ticket holders; they are actually giving technical direction, which is against the legislation to our members. Unfortunately, some of our members are not prepared to go on record because they are frightened of their position, but there was one just recently where that was actually proven. Our concern was it proven but no action was taken against the individual concerned.

Mr CRAWFORD: What sort of density do you have with respect to membership? Out of all potential members out there, what kind of density have you got as far as how many you are representing?

Mr Taylor: Right at the present stage we have people at every mine. I think every underground mine manager in Queensland is a member of our association and a lot of the SSEs, both open cut and underground.

CHAIR: Do you have a set of principles that apply to those managers that they follow—that is, 'If I'm going to be a part of this organisation, I'm going to go by the principles of this organisation'?

Mr Taylor: Yes, there are codes of conduct. If we believe that someone has breached the code of conduct, we will call them to account. In fact, with the one I just mentioned to you, we had a complaint from one of our members about an SSE giving them technical direction. Through our system that individual has a right obviously to defend themselves and we gave that right and what we were waiting for at the end of the day was the MRE to be issued from the inspectorate. When we found that that was released, we said to him, 'Pass us on the MRE and that'll tell us where you sit.' He chose at that stage to resign from the organisation, which saved us a lot of time and effort and heartache I guess, so fair enough.

CHAIR: So you are quite open to getting rid of people if they do not stand by your code of conduct?

Mr Taylor: Most certainly, yes. It does not do our association or mine managers' integrity any good across the organisation. So, yes, we do not want people in there who are doing the wrong thing.

Mr PERRETT: Just following on from that, is that common? Do you have problems with your members?

Mr Taylor: Generally speaking, no.

Mr PERRETT: It is rare that you would do that?

Mr Taylor: It would be.

Mr PERRETT: I know you did not touch on this in your submission, and I think you have sort of agreed that you do not have a problem around the civil penalties. Presumably these will be applicable to your members and they are significant. Have you sought feedback from your members with respect to the severity of the penalties?

Mr Taylor: We have. If those are the penalties that are applicable to every other industry in Queensland, how can we argue with it? We can be treated no differently.

Mr PERRETT: In terms of the big-stick approach in respect of that, do you think that is appropriate? It was mentioned earlier by one of the representatives who was here that trying to impose penalties like that perhaps, while they did not say it was counterproductive, is not always the best way to try and deal with these specific issues. I seek your opinion around that.

Mr Taylor: If you actually studied for and take the position of a mine manager, then clearly there is a moral obligation on you to do the right thing by the people who work for you. If there is a penalty associated with that and as long as the individual has not been shown to have wilfully broken legislation and it is not a minor breach, then we do not have a problem with that. If anybody has actually gone out of their way and wilfully done something, then, yes, throw the book at him or her.

Mr PERRETT: But presumably that is rare. If they have to be in compliance with your code of conduct, as you indicated before, it is a rarity to have members of your association in breach of that. It is unlikely that that is going to be a problem.

Mr Taylor: I can think of no time in the recent past where we have had a member who has been found guilty of an offence.

Mr PERRETT: Thank you.

CHAIR: Have you had a look at all of the submissions that have been put in with regard to this?

Mr Taylor: No, we have not.

CHAIR: You are saying that in the main you support the amendments as they are at the moment?

Mr Taylor: Generally, yes.

CHAIR: You cannot see any amendments that might need a little bit of—

Mr Taylor: Apart from the ones that we have outlined in our documentation, we were more than happy with it.

CHAIR: I totally agree with you with regard to maintaining members' competencies and making sure their personal development is spot-on. In saying that, I have to say that I have been around the industry for 30-odd years and I do not know you—I have never heard of you to be quite honest; you might have heard of me—but quite honestly I am really pleased with what I am hearing you say because your managers play a vital role in the whole operation of a mine and the safety of the workers. If that is what you are standing by, I commend you for that. I think it is a great thing that that is happening. In saying that, because I do not know you, I have to see how it all goes from here on or maybe do a bit more research, because if that is happening you should be commended for it.

Mr Taylor: All I can say is if we find one of our members not doing the right thing there is usually a quiet word spoken.

CHAIR: Good. I am pretty happy with what I have heard from you, so I appreciate that, unless you have anything else you would like to add.

Mr Sleigh: No, I do not think so. I think it has been pretty well summed up.

CHAIR: We did not give you guys a chance to have some input. Did you want to say anything, Elizabeth?

Ms Watts: No, it is fine. Gavin has done a good job.

CHAIR: He knows his stuff, doesn't he?

Ms Watts: He does know his stuff.

CHAIR: That is good. Thanks very much for your time here today. I appreciate you being so frank and obviously you are committed to it. Thank you very much.

Mr Taylor: Thank you.

Proceedings suspended from 12.24 pm to 1.18 pm

DJUKIC, Mr Robert, Director, Compliance and Regulatory Policy, Department of Natural Resources and Mines

HINRICHSEN, Mr Lyall, Acting Executive Director, Mineral and Energy Resources Policy, Department of Natural Resources and Mines

STONE, Mr Mark, Executive Director, Mine Safety and Health, Department of Natural Resources and Mines

CHAIR: I now welcome representatives from the Department of Natural Resources and Mines.

Mr Hinrichsen: I apologise that Mark's name was not on the original witness list but, as you would appreciate, we have been listening online to the various witnesses who have appeared. There are a number of operational issues that we think Mark would be best placed to comment on. With the committee's blessing, I would like Mark to be at the front table and those more operational questions to do with the work of the inspectorate we will pass Mark's way.

CHAIR: No worries. Do you have anything that you want to say first up?

Mr Stone: No, thank you.

CHAIR: Did you hear most of what was said this morning?

Mr Hinrichsen: We have been trying to listen in on most of the witnesses. Obviously, the submissions—and we thank the secretary—are now online. We have had a quick read of those. Again, we do not pretend to be as briefed and across the detail as we ordinarily would be. We appreciate the truncated time that the committee has to deal with this particular bill.

CHAIR: Will you be responding to the submission from the CFMEU and the particular issues that it has raised?

Mr Hinrichsen: Absolutely. We will be responding in some detail to all of the issues raised in the various submissions. Are there more submissions that are still outstanding?

CHAIR: No. We approved them this morning. It is all up to date now.

Mr Hinrichsen: We note that there was no QRC submission on the website.

CHAIR: We have only just received it.

Mr Hinrichsen: Thank you.

CHAIR: It will go up.

CHAIR: The managers' association seem to be fairly supportive of the amendments as proposed. They seemed to indicate as well that they supported the issues raised in the submission put in by the CFMEU. We can still ask you about some points?

Mr Hinrichsen: Absolutely.

CHAIR: Do the people who are in the policy development area have mining experience? Have they been to an underground mine to see how the operations work?

Mr Stone: Typically, no. The policy group within DNRM are highly experienced in developing legislation and taking policy principles from the government of the day and other stakeholders and developing them into legislative text that can be used and interpreted in an act. The process for those individuals who largely do not have that subject matter expertise is that it is provided to them through meetings and consultation and discussion. They have a close working relationship with OQPC—with the drafters—but interpreting policy positions, making them workable and trying to ensure that they achieve the outcome desired is an iterative process. We know that it can take a long time to develop an act, a regulation, or other quasi-legislation.

Mr Hinrichsen: Does that answer your question? Is that what you are getting at in terms of the policy position within the department?

CHAIR: Do those people on the policy committee come from within the department?

Mr Hinrichsen: There is a policy division within our department.

CHAIR: I have no doubt they are very skilled. They know what they are doing. I do not think anybody would ever question them on the work they do. With an industry such as the coal industry, particularly when we come to the safety of it, do people really understand the wording and how it can

change the intent of a particular clause, or section? I was just keen to know that, because, although we all learn from experience, the coalmining industry, and in particular underground mining, is unique in the way it operates.

Mr Hinrichsen: Sure. In that space, recently, we have had some changed organisational arrangements within the organisation. That has included a consolidation of the policy functions. Previously, policy associated with safety and health legislation was part of Mark's portfolio. That has meant that there has been a transfer of those officers who have worked on the policy aspects of the Mining and Quarrying Safety and Health Act and the Coal Mining Safety and Health Act for some time are now part of the mineral and energy resources policy team that I am the acting executive director for. Our department has a lot of people who are on the ground with those operational skills. That, in this space particularly, includes Mark and the chief inspectors who report to him. Those people have been absolutely instrumental in instructing on the policy objectives associated with this bill. That includes the consultations through CMSHAC and MSHAC—the two advisory committees—which Mark and his team has led and continues to lead.

CHAIR: I will go back to the point that I asked you this morning. Why has this taken so long?

Mr Hinrichsen: Why has it taken so long? The other criticism is that it has taken a relatively short period of time. There were issues outstanding. The minister did not want to pre-empt the CWP select committee's work. When the focus of that particular bill that now is before the parliament as a draft exposure bill became clear, the minister wanted to get on with the job of making these operational changes that have been talked about for up to four years and which were, in his view, long overdue and could not wait any longer. It has either been developed rather quickly or it has taken a long time, depending on your perspective. Both of those observations are probably correct in a particular context.

CHAIR: You would keep having meetings with all the stakeholders over a period of time? For example, the union might have an issue that they want to talk to you about. Do you wait until a certain time before you have those discussions or can they come in and talk to you about an issue?

Mr Hinrichsen: Any time. Obviously, there are the formalities associated with both CMSHAC and MSCHAC. That is a formal consultative framework—tripartite—that has been established for a considerable period. That is the very formal side, but the day-to-day consultation with all stakeholders happens through various means.

CHAIR: I went down that path simply because, as a chair of the committee, I am starting to see that it is taking so much time. FIFO was another good example. I have an understanding why that took so long and I probably have an understanding why this bill has taken so long. We have to have a serious look at that, because it is not what the public want.

Mr Stone: Certainly, I have heard three stakeholder groups talk about a CSMAC- or MSHAC-led review of the effectiveness of the legislation. The commissioner spoke about that, the CFMEU spoke about that and I believe the QRC touched on it as well. I have been with the department for only a few years, but I know that the tripartite group is rightly very proud of the legislation that we have today. Sadly, it was borne out of a number of mining disasters, but it is widely recognised as good safety and health legislation for mining. I think there is shared disappointment that, in the ensuing over a decade, there has been an inability to progress some significant and meaningful amendments to that legislation. For the reasons my colleagues spoke about, with regard to the recent waiting for the select committee to provide its exposure draft, the minister wanted to progress those specific amendments. Within the safety and health advisory committees there is a clear intent that that future review of the effectiveness of the legislation will certainly be performed within those advisory committees and they will fulfil one of their objectives, which is to provide the minister with advice on the effectiveness of legislation.

CHAIR: I respect what you are saying. I understand where you are coming from. I look at it from an ex-miner's point of view. I look at it as a chair of a committee where we are supposed to be making things happen, that the legislation is thoroughly tested and the intent is correct—all of those particular things. The reality of life is that we could be heading to an election any time between now and Christmas and this legislation may not get through. It puts it back another 12 months. Those are the things that I am just a little bit concerned about.

Ms LEAHY: I would like to thank the departmental officers for coming back again this afternoon. Mr Stone mentioned that, hopefully, there are good improvements and good legislation. I did not see throughout the bill how you are going to measure that it is good. It is one thing to make the statement, but how are you going to measure that it is good legislation? When we look back through the history in terms of the mine safety issues that we have had and read the submissions, how are we going to measure that this bill gives quantified improvements?

Mr Stone: The commissioner made the remark earlier that it can be quite a challenge to measure the effectiveness of the legislation. I will say how I think we can do it in a few ways. I will talk about the recent provisions that were made to the Coal Mining Safety and Health Regulation. In brief, the observation was that respirable dust levels were not in compliance uniformly at all sites. The tripartite group—that is the CMSHAC—developed regulation amendments and a recognised standard as requested by the minister. That became effective in January. The first half of this year is clearly a step change in respirable dust levels at Queensland's coalmines. We know that in recent months there have been some issues of a number of sites failing to take the correct number of monitoring samples, but, in looking at that data that is now on the department's website, I would say that that is a good measure of the effectiveness of the legislation.

If we look elsewhere, as is often the way with performance measurement, we have a bit of a mixed bag. Although in Queensland we see that the fatality rate is at an all-time low and that it is certainly much safer to work in Queensland's mining industry than it has been over the past couple of decades, we have this new paradigm of moving to zero fatalities. Still, on average, the Queensland mining industry is killing a number of people each year. That is a challenge. We see that the lost time incident frequency rate is decreasing, yet we see that the high potential incidents—those incidents that can cause harm—seem to be persistent.

All in all, when the Mines Inspectorate puts together its compliance program each year and determines where it should be focusing its regulatory effort—and in mining, for example, in 2016-17 we performed something like 1,700 inspections that were mainly focused, targeted inspections—each year we look at where we see people being potentially injured and actually injured and we refocus the regulatory effort. There is an ongoing piece around compliance and the effort of the inspectorate.

To determine the effectiveness of legislation probably takes multiple years, because it can take a period of time to work through improvements. For example, we have talked about a potential amendment to contractor management. We have heard at least three sets of stakeholders talk about the disproportionate injury to a contractor workforce. If that is an effective amendment to legislation, I would expect that we would see that start to propagate through the high potentials, the injuries and, heaven forbid, the fatalities. We should see that start to propagate through. We should see that population not be outstanding. We should see that we treat contractors, in that example, treated no differently from how we treat employees.

Ms LEAHY: If we come back to dust, from the select committee's findings it seemed to have not been identified and now it has been reidentified. Why are we not measuring that? Obviously, we have not been measuring it in the past, because of the re-emergence. That is how the select committee came about, along with a number of other issues.

Mr Stone: Just on that one, very briefly, we did measure—that requirement to monitor. Although I would say that it has been made more robust in the recent regulatory changes, that was always there—the requirement to sample the workforce, the respirable environment. What was not there was the requirement to provide that information to the regulator. Although it could be, and it has been, requested by the regulator over the years, there has not the requirement that we have today that each quarter all mine sites submit that data. That, plus a renewed focus by the union and the industry with the reidentification, has driven that. That particular hazard in mining is now very much under control. It is showing strong performance. I would say that is working quite well. We need to go to look at all the other hazards present in the mine site and ensure that they are also under control.

Mr CRAWFORD: I am interested in hearing your thoughts. Obviously, you watched the broadcast of the various groups who came today. Do you have any comments? You would have picked up a few things that, no doubt, you would think that we are looking for.

Mr Hinrichsen: I do not think that there were any things that were hugely surprising to us. Obviously, we have a fair bit of work in front of us. A part of this process that we value very much is getting that formal feedback. We will take a detailed look at all of the issues that were raised.

As I am sure the committee appreciates, there are some divergent views on many of the points that have been raised. We will not pretend for a minute that we can come up with any panacea that will make everyone happy. This is all about getting better safety and health outcomes. We will be looking very critically at all of the issues raised. Obviously, if good, valid points are made, we will be acknowledging those. No doubt, the committee will then be incorporating recommendations to our minister in its report on any changes that might be required.

I am not in a position here today, member for Barron River, to say whether there are any such changes that might be required. Some very good, valid points have been raised and we will be looking at those very closely. Obviously, we will be consulting with our operational colleagues—those people

who are quite literally at the coalface—and with stakeholders in making recommendations back to our minister. We are under a pretty tight time line, as is the committee, in dealing with this process. A number of issues have been raised. Some witnesses have made the observation that this cannot be the end of the process. No doubt, there will be issues that require further consultation, further policy work and potentially further iterations. The objective is always to look at those opportunities to value-add through this process. We think that there is a basis for some pretty good policy in the bill that the minister has presented for this committee's consideration.

Mr CRAWFORD: One matter that popped up when the mine managers group was in front of us was their recommendation about the ministerial discretionary power in relation to the members of the coal committee being experienced in coalmining operations. You would have heard their comments in respect of that. You would not have been able to see on the television the CFMEU members sitting directly behind them all nodding. It might be worth having a look at that one to see whether there is any scope in respect to how that one gets applied.

Mr Hinrichsen: Absolutely. That would be a matter that we would discuss with the minister. There is always a balance between having prescription in legislation and allowing the responsible minister to have appropriate discretion when it comes to what are very significant decisions and appointments to groups such as that.

Mr PERRETT: My initial question is to Mr Stone with respect to what you do. I have never had any hands-on experience with respect to what you do. Obviously, I have heard a fair bit in recent times, particularly with CWP. I assume you are the head of the inspectorate.

Mr Stone: Yes, that is right. As the executive director, I have accountability for four inspectorates: petroleum and gas; explosives; the mineral, mines and quarries; and coalmining. Across those four inspectorates we have just shy of 100 inspectors. Within coalmining we are at 42, or 43 inspectors of mines.

Below that, we have different types of mines inspector: mechanical, mining, geotechnical, occupational hygiene, electrical. They have a wide range of experience. Typically, our inspectors have spent a significant part of their career working in mining, often as either a tradesperson or coming up through operational jobs in mines.

We have quite a lot of the statutory tickets that you have heard about today: first class, second class, deputy, open-cut examiner. I would say that probably 95 per cent of the inspectors are not based at 1 William Street; they are in regional offices, including the south region here that serves the Surat.

My role is that I have accountability for the delivery. Within that, it is my role to make sure that we are appropriately staffed and resourced. I delegate to my chief inspectors to develop the correct compliance programs, which is anything from workshops, education, inspections, audits, participation in Australian standards and the advisory committees that we talked about here today. That program is a highly operational program. As I said, there are 1,700 inspections by industry safety and health representatives working with district worker representatives, working with the industry. My role is ultimately to make sure that that all delivers.

Mr PERRETT: That is what I was trying to get a handle on. You oversee and seek compliance with the regulatory process of the legislation. With respect to the existing legislation, do you come across a lot of breaches?

Mr Stone: We certainly come across breaches. I would qualify the 'a lot'. I would say no. I observe that the majority of operators, the industry and individuals do the right thing. They are aware of their obligations and they do that the vast majority of the time. If we look at a classic compliance policy approach that we have, we move up a triangle towards a much smaller group of individuals. Generally, the breaches could be, ‘I know what my obligations are, but I have not met them.' There may be some good reason for that. There is an even smaller group, ‘I know what my obligations are and I chose not to follow them.' As we are getting to the pointy end, the compliance process then starts to look at tools to correct that behaviour, which can be prosecution, fines, the suspension of operations.

All of those things over the course of a financial year we will direct our mines inspectors, industry safety and health representatives and district workers representatives. Substandard corrective practices notices will be issued. There are directions to review the safety and health management system. We have suspended operations at a couple of sites this year. We have initiated prosecutions over the course of a year. What I observe is on the whole a very good level of compliance but, certainly, breaches occur from time to time.

Mr PERRETT: Provisions within this legislation strengthen your role in not only seeking that compliance but also better outcomes for all who are associated with the mining industry.

Mr Stone: I think that is correct. With that comes a responsibility to use those provisions judiciously and appropriately. There has been a lot of focus on making sure that there are checks and balances in terms of a natural justice process and who can initiate intermediary steps—the policy around suspension, not straight to the removal of a statutory certificate and giving natural justice to those whom the department believes have breached. Ultimately, we are always talking about a small minority of instances. I feel that sometimes we can lose sight of that through the discussions. Of course, they need to be appropriately applied.

Mr PERRETT: With regard to the tripartite process, obviously you are a key player within that—and this might be directed to Mr Hinrichsen—along with the workers' representatives and the industry itself. No doubt there would be some robust discussions in and around that. As the department, do you feel confident that that process is important in trying to establish any concern that there is from not only the department but more importantly the industry and the workers' representatives?

Mr Hinrichsen: The tripartite process is associated with both acts—there is the coalmining safety and health advisory council and the mining inquiry—and they are absolutely intrinsic parts of the regulatory framework. Mark is our conduit to that, but that is really where issues get put on the table and hopefully resolved. Everyone that you have had either make submissions or appear before this committee will put hand on heart and say that their priority is safety and health outcomes. That is generally the case: that most people in this business, whether they are from the worker representative side or from agencies or from industry, see safety and health outcomes as imperative. How that is delivered is obviously often a point of difference, so there is still a role for our minister ultimately. He is the minister accountable for the legislation in making some calls, and he has clearly done that with this legislation. The majority of the provisions here have been discussed through both CMSHAC and MSHAC, but there are those provisions where the minister believes that there have been systemic problems and there needs to be a strong legislative response and hence the two additional provisions which are about stronger compliance powers are therefore a part of this legislation.

Mr PERRETT: Thank you.

CHAIR: Mark, earlier you were talking about the work that the department was doing—the inspectorate—and you talked about the number of fatalities that we have had and the number of lost time injuries and the frequency injuries. I want to ask a couple of questions around that. First of all, you said you had had 1,700—

Mr Stone: Inspections.

CHAIR: Yes, inspections. How many prosecutions followed as a result of those inspections?

Mr Stone: There would be a handful maybe. Let me just backup and describe the process. The number I quoted earlier was for mineral mines and quarries. For coalmines I think we did in 2016-17 something like 800 inspections. Usually those inspections are targeted and they are typically going in to look at an element of the way that the mine is operating. Let us say that the inspection was for an underground coalmine and we were interested in looking at its respirable dust management. The outcome from that specific inspection may be that the vast majority of the times there is no deficiency identified or it could be that there is deficiency and that a directive is issued to make corrective action, and that is time bound and it is clear what work needs to be done. If that does not achieve the outcome, then under the compliance policy that the Mines Inspectorate has an escalation occurs and that escalation can result ultimately in a prosecution.

Through the course of the Coal Workers' Pneumoconiosis Select Committee I think there has been a discussion that the Mines Inspectorate would maintain and that I would maintain that the prosecution for the case I mentioned for respirable dust is not an effective tool. The issuing of a directive to make good and to restore control, I would contest, has been proven to be effective over the last 18 months. By and large the inspections are going to look at how a process or a system is performing and generally if there is any deficiency noted a directive is an effective way of getting that back into sync and getting it back to being compliant. The prosecutions are more likely to occur where an incident or an accident has occurred and where the Mines Inspectorate investigates. When we investigate and find breaches of the act and we believe it is in the public interest to prosecute those—and, as you are probably familiar, the public interest test looks at a number of criteria, including the severity of the breach and what behaviour we are looking to change—it would be a very small number that we would ultimately prosecute and they are more likely to be as a result of an incident.

CHAIR: Would you have situations where you have repeat offenders—ones that you have to keep going back to?

Mr Stone: I think the historic records in the mines department would show that. I can certainly think of a mineral mine where deficiencies in its safety and health management system recurred over a number of instances—over probably a multiyear period—and in that instance it was not considered appropriate to issue a directive. It was considered appropriate to look at that period and ask the question whether that particular operator was capable of sustaining compliance and was motivated to do so, so that resulted in a prosecution.

CHAIR: We will just go back to those and we will just focus on the coalmines, if you do not mind. Of those inspections that you had, you talked around it but you did not really give me an answer on how many prosecutions.

Mr Stone: To give you an accurate answer, I would have to go back and look at the records. It would be fairly quick to do so, but I do not have them with me.

CHAIR: Yes, no problem. How many of those would have been unannounced? That is the role of the inspectorate—that is, to look at the way they go about doing their job and doing it in a way that is fair to everybody. How many of those inspections would have been unannounced?

Mr Stone: From memory, when we looked at this—and I think we took a question on notice for the Coal Workers' Pneumoconiosis Select Committee—we found over the last decade our percentage of unannounced inspections was around 10 per cent or 15 per cent, so one out of every 10. Again, you have to look at why would you perform an unannounced inspection. The majority of the time the Mines Inspectorate and the mines inspector knows what they want to look at. In order to be able to have a good look at the systems and processes and speak to the individuals in the right roles, that inspection is absolutely communicated to the mine site to make sure that the inspection is a valuable exercise. There are absolutely other occasions when we would want to check that a process which the mine has committed to put in place is being adhered to 24/7. They are the minority, but I will be very open and say that the comment from the Coal Workers' Pneumoconiosis Select Committee did motivate us to look at other jurisdictions to talk to our colleagues in New South Wales and other mining jurisdictions to discuss what level of unannounced to announced inspection ratio they had and why they would do that. So we are looking at it, in short.

CHAIR: Speaking from my experience and from talking to people in the industry, not so much today but previously a lot of mining companies paid their workers overtime to get the mine ready for an inspector to come. When I first came into this place I started arguing that we should be doing unannounced inspections. That is a reason why we need to have them because the mining companies do not want to always play by the game and keep the mine in a safe condition at all times instead of waiting until the inspector comes along. While we are on that, I want to raise the issue of lost time injuries and the frequency rate. You said that that was going down. I really have some issues with that because I am out there on the ground all of the time talking to mineworkers. Mineworkers are taking holidays if they get injured. Say somebody has broken their hand, they are taking their holidays and that does not register as a lost time injury. They take workers out to the site and put them in a sit-down job because it does not register as a lost time injury. I would suggest to you, for your own information because it is worth looking at, that lost time injuries would probably be up simply because we do not have the people with the skills, the knowledge and they have this fear all of the time that if they do not get in and do it they will lose their job. That is a really big issue in the industry. If you guys could look at that, I think it is about making a lot of ground in terms of the protection of workers. Labour hire people just want a job. They are not worried about looking after their mates for safety or looking after the safety of the mine. It is about doing their job as requested by the mine company through the labour hire company. I am just putting that in there for you to think about because, as far as I am concerned, that is a big issue that is just left running and unchecked. Employers are getting away with having those workers not report an injury so that it does not show up as a lost time injury. That is morally wrong.

Mr Stone: Yes.

Ms LEAHY: I have another couple of quick questions. Just in relation to the small mines such as the opal and gem miners—and I am very happy for the department to take this on notice—can the department provide the committee with a short summary since the fatality figures have been recorded in relation to the number of fatalities there have been in those mines of 11 workers and under? I am just wondering if you can give us some statistics on that.

Mr Hinrichsen: Do you have those statistics convenient at hand, Mark? If not, we can take that on notice.

Ms LEAHY: I am happy for you to take it on notice. I have one other issue that was raised by the Queensland Resources Council in relation to the civil penalties. Can the department perhaps advise as to how the rules of double jeopardy are going to be dealt with with those provisions in the bill?

Mr Hinrichsen: And I think the provisions were accurately outlined by the Queensland Resources Council in that space. First of all, it says that a civil penalty cannot be imposed if there has been a criminal prosecution but, in reverse, if there is a civil penalty it does not prevent a criminal prosecution from being initiated. I guess that recognises that the civil penalty is about effectively a breach of accountability. As I mentioned earlier this morning, the things for which a civil penalty will apply are where it is basically an obligation that was or was not complied with whereas a criminal penalty in the way the mining safety and health acts are structured is about the consequence. I think it would be a pretty rare situation for a civil penalty to be applied and then criminal proceedings, but the legislation does contemplate that. I guess that would apply in a situation where that breach which triggered the civil penalty had some significant consequence, so the death of a worker or grievous bodily harm or one of the serious offence provisions in relation to those two pieces of legislation. If there is a criminal prosecution that occurs, the civil penalty cannot be applied.

Ms LEAHY: Okay; that is fine. Thank you.

CHAIR: Thanks again. It is very difficult to sit in the chair sometimes. You have to ask questions, but you do not want to be giving anybody a hard time, so please do not think I was giving you a hard time.

Mr Hinrichsen: Not at all.

CHAIR: Because we are all about the same thing, and that is the safety of mineworkers and mines themselves. There are two questions on notice, so if you can get those back by Tuesday, 3 October. Given that there are no further questions, I thank you all once again for your attendance here today. The different sessions have certainly been interesting and we have gained a lot of information that will help the committee's inquiry into this particular amendment bill. I thank the Hansard reporters. I do not know what we would do without Hansard. They work so hard for us. A transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I declare the hearing closed. Thank you very much.

Mr Hinrichsen: Thank you, Mr Chair. Thank you, committee.

Committee adjourned at 2.00 pm