QUEENSLAND resources COUNCIL

Resourcing Queensland's future

16 April 2018

Ms Leanne Linard MP
Chair Education, Employment and Small Business Committee
C/- Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George Street
Brisbane Qld 4000

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Dear Ms Linard,

I refer to the inquiry of the Education, Employment and Small Business Committee into the *Mines Legislation (Resources Safety) Amendment Bill 2018* introduced into the Queensland Parliament by the Hon Dr Anthony Lynham, Minister for Natural Resources, Mines and Energy on 20 March 2018.

The QRC is the peak representative organisation of the Queensland minerals and energy sector. The QRC's membership encompasses minerals and energy exploration, production and processing companies and associated service companies. The QRC works on behalf of its members to ensure Queensland's resources are developed profitably and competitively, in a socially responsible and environmentally sustainable way.

The Bill is of direct importance to the operations of QRC member companies, including the major coal mine and metalliferous mine operators and service companies associated with the Queensland mining industry. These member companies regard the health and safety of their workers as a core value, and industry is supportive of evidence based legislative change to ensure our health and safety legislation continues to represent world's best practice.

The QRC notes that the Bill is substantially the same as the *Mines Legislation (Resources Safety) Amendment Bill 2017*, which was referred to the Infrastructure, Planning and Natural Resources Committee (IPNRC) prior to the dissolution of Parliament for the 2017 election. The QRC position on the 2018 Bill also remains substantially unchanged, so I include our detailed submission on the 2017 Bill as Attachment A.

Comments on provisions that have changed between the 2017 and 2018 Bills

In its 2017 submission the QRC noted that the genesis of a number of the issues in the Bill was the Queensland Mine Safety Framework Regulatory Impact Statement (RIS), released in 2013, but that some other proposals had been subjected to very limited consultation. Since then the IPNRC tabled its report on the 2017 Bill and the proposals

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have been discussed by the tripartite Coal Mining Safety and Health Advisory Committee (CMSHAC). Apparently because of that discussion alone, a small number of changes have been made to the 2018 Bill, and those changes are dealt with separately in Attachment B of this submission. Most of these changes are supported by the QRC where they reflect the unanimous view of the Committee, even though some provisions now vary slightly from that supported by the QRC's 2017 submission. However, it is noted that a unanimous view of CMSHAC does not necessarily equate to a unanimous view amongst industry, particularly for matters not related to coal.

One issue on which there is some divergence is the removal of the discretion (in clause 21 of the 2017 Bill) for the Minister to appoint members to an Advisory Committee who are not experienced in mining operations, if the Minister otherwise considers the person appropriate to be a member of the Committee. Some QRC members are of the view that this discretion should be reinstated into the Bill. In its 2017 submission the QRC noted the advice in the Explanatory Notes that this amendment was primarily intended to address problems with obtaining worker representatives for appointment to the Mining Safety and Health Advisory Committee (MSHAC), but that the proposed amendments would also apply to CMSHAC for the sake of consistency.

The QRC responded in 2017 that ensuring the Advisory Committees have enough practical experience is important; however, the QRC also noted that the Committees could benefit from a broader range of experience in their membership. The recent example of CMSHAC having to deal with CWP was provided as an example of where that Committee could have benefited from additional health or hygiene expertise. The QRC therefore supported the proposal in principle, provided the Committees still retained adequate practical mining experience to operate effectively.

The QRC now questions whether the removal of this proposed amendment will pose an issue for MSHAC membership into the future, and whether CMSHAC advice is broad enough consultation on the question of whether or not removing the operational experience requirement would adversely affect the functioning of either Advisory Committee.

Comments on key matters that have not changed since the 2017 Bill

The QRC's submission on matters that have not changed since the 2017 Bill remain unchanged, and those submissions remain our position. However, we wish to again draw your attention to some key points.

Change from "executive officer" to "officer"

The QRC's 2017 submission noted that the stated intent in the 2013 RIS was to improve the alignment between the resources safety and health legislation, and the *Work Health and Safety Act 2011* (WHS Act). As an example of the need for greater consistency in this approach the Bill proposes to amend the definition of "Executive Officer" under the resources safety and health legislation to mirror the WHS Act definition of "Officer". The only reason that has ever been provided is for consistency; no potential improvement in safety and health outcomes has been demonstrated, or even discussed. To potentially change the class of people that are affected by this definition, noting that the penalties that can be imposed on an Executive Officer are substantial, without a detailed analysis of the impact of the change, is unacceptable. The QRC still believes that just stating that the aim is to achieve consistency is not enough.

This is particularly so when there is another example where the concept of consistency is being ignored, as is the case for the proposal to introduce a new compliance tool in the form of civil penalties.

The proposed civil penalties regime

The WH&S Act provides for civil penalties, but under a very different framework than what is proposed in the Bill. The WH&S Act identifies a range of administrative non-compliances as being "civil penalty provisions", for which proceedings may be taken in a Magistrates Court under the rules of evidence and procedure for civil proceedings. The maximum penalty for breaching a civil penalty provision under the WH&S Act is 100 PU ($10,000) compared to the proposed maximum of 1000 PU ($126,150) in the Bill. This is a very high penalty for contravening an administrative process, particularly when compared to the size of penalties that have been imposed by courts following prosecutions for serious breaches of the mining safety legislation.

While QRC acknowledges that this issue was addressed in the IPNRC report, which stated a view that "high financial penalties proposed in the Bill will act as a deterrent to possible non-compliance" (for which there is in fact little evidence), industry still considers that these administrative penalties are inordinately high. They are certainly completely out of step with the State's other workplace safety legislation.

The QRC also raised the concern that the construction of the Bill allows that a corporation could be prosecuted for an offence and found not guilty, but then have a civil penalty imposed for the same alleged contravention. While the IPNRC report dealt with fundamental legislative principles in detail, and the issue of double jeopardy around civil penalties in particular, the only answer to the QRC's concern provided by the IPNRC was to quote the departmental response:

> *A civil penalty will not be imposed after any criminal proceedings. There may be instances where it may be necessary for criminal proceedings to commence after a civil penalty is imposed, however this would be subject to the existing considerations in determining whether to commence proceedings i.e. a matter is in the public interest etc. If a civil penalty was imposed, this would be a matter that would be considered in determining whether to commence a proceeding. Natural justice will be afforded to a company prior to a decision being made to impose a civil penalty*[1].

While the Department's assurances in relation to the public interest test for prosecution and the natural justice provisions within the Civil Penalty process are noted, the QRC maintains its position that this is an issue where a legislative fix could put the matter beyond doubt.

Notification of reportable diseases

For the reasons stated in our submissions on the 2017 Bill, the QRC is of the view that it is critical that SSE's also be notified of any reportable diseases at a mine, to enable the

[1] Department of Natural Resources and Mines, correspondence 29 September 2017, p 11.

SSE to discharge their duties to ensure that risks to health and safety at the mine are at an acceptable level.

Thank you for the opportunity to contribute to this process. If you require any further clarification please contact Mr Shane Hansford on telephone or e-mail

Yours sincerely

Judy Bertram
Deputy Chief Executive

APPENDIX A

QUEENSLAND resources COUNCIL

Resourcing Queensland's future

QRC response to the *Mines Legislation (Resources Safety) Amendment Bill 2017*

The Queensland Resources Council (QRC) notes that the genesis of many of the proposals in the *Mines Legislation (Resources Safety) Amendment Bill 2017* (the Bill) can be found in the National Mine Safety Framework (NMSF) process and proposals made in the Queensland's Mine Safety Framework Consultation Regulatory Impact Statement (QMSF RIS) in 2013. The stated intent of the QMSF RIS was to achieve a greater alignment between the mining safety Acts of the major mining jurisdictions and the *Work Health and Safety Act 2011* (WH&S Act) where that will lead to improved safety outcomes. The QRC is concerned that this approach is being selectively applied which will not provide any of the benefits of legislative harmonisation, and that there is no evidence that many of these proposals will lead to safety improvements. That was the QRC position in responding to the QMSF RIS in 2013, and remains the QRC position.

Other aspects of the Bill are new, and have only been subjected to limited consultation (in August 2017) prior to the Bill being introduced. As advised by the Explanatory Notes, during that limited consultation "Industry did not indicate support for proposals to increase penalties or impose civil penalties…", but rather expressed concern about those proposals. The Explanatory Notes also state that the Office of Best Practice Regulation has provided exemption from the requirement for a RIS for these matters, potentially limiting the opportunity for industry response on these matters to QRC raising its concerns with the Infrastructure, Planning and Natural Resources Committee. The QRC does not believe that this process provides adequate time and opportunity for industry to properly respond, but notes that it is a specific responsibility of the IPNRC to consider the application of the fundamental legislative principles set out in section 4 of the Legislative Standards Act 1992. This response raises some concerns regarding the alignment of the Bill with legislative principles.

The changes introduced by this legislation are largely represented as insignificant and as introducing only minor costs to implement. Previous assessment however would indicate that there will be significant costs to implement some of these changes, for example Board of Examiner processes related to competencies and statutory tickets. These proposals have a direct impact on the level of regulatory burden associated with the mining safety framework. Industry is also concerned about the proposed inclusion of 'civil' penalties, particularly given the scale and lack of consistency with other safety legislation.

In summary, the QRC is concerned that the proposals have not been subjected to proper analysis to substantiate that they will bring about meaningful improvements in the Health and Safety framework, commensurate with the increase in regulatory burden they impose.

Proposal & Explanatory Note comments	QRC position	QRC comments
Higher financial penalties The Bill will increase the maximum financial penalties to "be more closely aligned with the maximum financial penalties in the *Work Health and Safety Act 2011* (WH&S Act)". Maximum penalties have also been specified for an officer of a corporation.	The QRC does not support the proposed increase in penalties, however if it proceeds then the QRC believes that there should also be proper and ongoing alignment between the value of a penalty unit under the resources legislation and the WH&S Act.	Higher financial penalties were proposed in the 2013 QMSF RIS, and the QRC response at that time was that there was no evidence that the penalties in the *Coal Mining Safety and Health Act 1999* (CMSHA) and the *Mining and Quarrying Safety and Health Act 1999* (MQSHA) are inadequate. The QMSF RIS failed to demonstrate any evidence that the Courts have in any way been limited by the existing sentencing regimes under the mining safety Acts. The QRC also advised at that time that there was no evidence since the introduction of the WH&S Act that the increased maximum penalties had any significant effect, and there was therefore no evidence that increased maximum penalties will achieve greater safety outcomes in mining. The Explanatory Notes state that the Bill, in aligning penalties on the basis of numbers of penalty units, will result in higher maximum financial penalties for resources safety breaches due to the higher value of a penalty unit under the resources Acts ($126.15 compared to $100). The QRC notes the reason given is that WH&S Act maximum penalties have not been adjusted since 2011. The Explanatory Notes further state that when such a review occurs nationally, it is expected that no further changes to the CMSHA and MQSHA will be required as the maximum financial penalties in the resources Acts have been increasing incrementally over time. The QRC is aware that this incremental increase in PU values in the mining legislation has been due to the policy of applying CPI increases automatically to all fees and charges in the Resources Acts, including the value of the PU. If the higher unitised penalty rates are adopted, the QRC believes that the value of the PUs should also be aligned moving forward. Relying on the unknown outcomes of a National review to align the penalties, when that is the stated intention of this change, is inappropriate. If alignment with penalty rates is desired, then the value of a PU in the mining legislation should only be adjusted when the value of a PU is adjusted in the WH&S Act.

Proposal & Explanatory Note comments	QRC position	QRC comments
		When the proposed NMSF was under development the QRC supported the alignment of resources and general workplace safety obligations because of the benefits it would bring, particularly for those many companies that operate under both sets of legislation. The QRC does not however support the approach that is now being proposed, that is to cherry pick certain aspects of the WH&S Act related to penalties and apply them without any of the benefits that wider legislative harmonisation would achieve. That is even more the case when there is no attempt to align other aspects of the penalty regime, such as civil penalties.
Civil penalties The Bill will enable the Chief Executive of DNRM to impose civil penalties against corporations who are mine operators or contractors who fail to comply with obligations or requirements under the CMSHA or MQSHA. Three categories are proposed – 1000 PU for category 1; 750 PU for category 2; and 500 for category 3.	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 *Workplace Health and Safety Act 2011* for minor administrative breaches with a maximum penalty of 100 penalty units. If the proposal is to proceed largely as proposed, then it needs at least to be amended	The QRC notes that this proposal has only been subjected to limited consultation (in August 2017) prior to the Bill being introduced. As advised by the Explanatory Notes, during that limited consultation "Industry did not indicate support for proposals to increase penalties or impose civil penalties…", but rather expressed concern about the proposal. In the course of the very limited consultation that has been undertaken on this issue, industry representatives were advised that a system of administrative penalties was being proposed as an <u>alternative</u> to prosecution; however, as it is currently drafted the Bill would not prevent a prosecution from being initiated in a case where a civil penalty had already been imposed. As drafted, 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; in fact, it is expressly permitted under clauses 44 and 87 through the proposed new section 267K in the CMSHA and section 246K in the MQSHA respectively. The construction of the Bill even allows that a corporation could be prosecuted for an offence and found not guilty, but then have a civil penalty imposed for the same alleged contravention. The QRC also believes that natural justice is not adequately provided in the process for appealing against a civil penalty, because a potential period of only 14 days is not a sufficient timeframe to respond to a civil penalty notice. This is particularly so given both the size of the proposed penalties and the reputational impacts for a

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	to remove the prospect of double jeopardy and to provide a more reasonable time frame to respond to a civil penalty notice.	company that is issued with a notice. By contrast, the Mines Inspectorate does not have any limitation on the time from the alleged breach to issuing the notice proposing a civil penalty. The Mines Inspectorate could conceivably have spent months investigating an incident and preparing the notice. For this reason, the QRC believes, if this proposal is to proceed, that the minimum response period should be extended to 28 days. The QRC also believes that a company should be provided an express opportunity to apply for an extension to a proposed response period; 14 days is a more reasonable timeframe to request such an extension. The QRC is also concerned about the policy position that this proposal promotes. By introducing a tiered system of categories of obligations and associated civil penalties the proposal risks creating the perception that not complying with any obligation under the relevant Act will be able to be addressed by paying an administrative fee, and that doing so is simply a cost of doing business. The QRC does not support that approach or perception; breaches of obligations should be assessed under a robust prosecution policy and perpetrators should be prosecuted under the relevant provision of the legislation where that course of action is warranted. Where prosecution is not warranted then the current system of tiered compliance meetings between operators and the mines inspectorate are an appropriate way to address any issues and improve performance. There is no evidence that imposing an administrative fine will have a significant impact on the likelihood of breaches occurring that are not deemed serious enough to prosecute. The QRC also questions whether the categories of penalty matters are suitable for this kind of approach, and proffers the example of a failure to report a high potential incident (HPI). The definition of many HPI's are ambiguous and open to differing interpretations. It would be unreasonable for someone to be subject to a significant fine for failing to report something which they genuinely believed was not reportable. The outcome will be to drive over-reporting, which will distract attention from the important matters that need attention.

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		The QRC also believes that this proposal provides an example where an alignment with the WH&S Act is being selectively made. The WH&S Act provides for civil penalties, but under a very different framework than what is proposed in the Bill. The WH&S Act identifies a range of administrative non-compliances as being "civil penalty provisions", for which proceedings may be taken in a Magistrates Court under the rules of evidence and procedure for civil proceedings. The maximum penalty for breaching a civil penalty provision under the WH&S Act is 100 PU ($10,000) compared to the proposed maximum of 1000 PU ($126,150) in the Bill. This is a very high penalty for contravening an administrative process, particularly when compared to the size of penalties that have been imposed by courts following prosecutions for serious breaches of the mining safety legislation.
Suspension or cancellation of certificates of competency and site senior executive (SSE) notices The Bill will provide the chief executive of DNRM with the ability to suspend or cancel a certificate of competency where the holder has contravened an obligation or committed an offence under mining safety legislation in any Australian jurisdiction, or if they hold a certificate in another jurisdiction that is suspended or cancelled.	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 assurance that natural justice will be provided. Given the lower impact of suspension, the QRC is willing to consider a proposal to allow 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 Magistrate's Court.	The QRC notes that this proposal has only been subjected to limited consultation (in August 2017) prior to the Bill being introduced. As advised by the Explanatory Notes "Industry did not indicate support for proposals to increase penalties or impose civil penalties…", but rather expressed concern about the proposal. The QRC is of the view that this proposal clearly makes the rights conferred on an individual (in the form of a certificate or notice that has been issued) subject to an administrative power, and believes that the proposed review through the Magistrates Court is inappropriate if a certificate or notice is to be cancelled. The proposal gives the Chief Executive the opportunity to exercise a power to cancel a certificate or notice, potentially with a much lower threshold of proof that a person has contravened a safety and health obligation, than would apply if that person had been charged with an offence. While the certificate holder can ultimately appeal to the Magistrates Court, they may be prevented from doing so by their personal circumstances, and if faced with an uncertain outcome a person could regard the additional expense of an appeal prohibitive. The legislation already provides a course of action for the Mines Inspectorate if they believe a person has contravened an obligation under the resources safety legislation in charging them with an offence. Upon conviction for that offence the Court could order that the person's certificate or notice be cancelled. The QRC

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		believes that this is a more appropriate course of action to deal with a serious breach of a safety and health duty than to have the Chief Executive exercise a power and follow the course proposed in the Bill. The QRC further believes that, given the Court already has the power to order the cancellation of a certificate or notice, giving the Chief Executive the power to do so if the Court chooses not to, is particularly inappropriate. The QRC is however willing to consider a proposal to allow administrative suspension of a certificate or notice for a limited period as an alternative to prosecution for less serious offences. In these cases, proceeding to a court case may not be in the public interest. However, cancellation of a statutory ticket should only be granted by application to the Magistrate's Court under clear rules of evidence and proceedings. The administrative process for the Chief Executive to decide to suspend or cancel a statutory ticket is unclear. The QRC believes that suspension of a certificate or notice should not follow a recommendation of the Board of Examiners (BoE), but should be taken by the Chief Executive considering advice from the Chief Inspector. The current structure of the BoE makes it highly likely that Board members would know the person for whom statutory ticket suspension is being considered, and they are not subject to the same level of probity as the Chief Inspector.
Officer obligations The Bill amends section 33 CMSHA and 30 MQSHA to provide that officers of corporations have health and safety obligations, and omits current provisions that require "executive officers" to ensure compliance with the relevant Act.	The QRC supports the proposal to remove the reverse onus of proof existing 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	The adoption of the "officer" definition and obligations from the WH&S Act was proposed in the 2013 QMSF RIS. QRC did not support that at the time and suggested instead that the standard provisions set out in the *Directors' Liability Reform Amendment Bill 2012* should be inserted into the Resources Acts, and the existing definition of "executive officer" should be retained. The word "officer" in the WH&S Act has a broader meaning and application than the definition of "executive officer" in the resources safety Acts, meaning more people will be exposed to the obligations and liabilities if applied under the Resources Acts. The QRC supported removing the existing reverse onus of proof on

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The Bill inserts a new division into each of the Acts to impose a duty on officers of a corporation to exercise 'due diligence' to ensure that the corporation complies with any obligation under the Act. The division also includes examples of reasonable steps for an officer to show due diligence and thereby discharge their obligations.	"officer" from the *Corporations Act 2001*.	Executive Officers, but opposed expanding the range of people that have such obligations and liabilities without evidence that there would be some safety benefit. The QRC viewed the proposal as simply the creation of further statutory obligations that apply to certain positions within a company, and felt that DNRM had failed to make a case for the proposed change. Once again, it is an example of attempting limited alignment between the enforcement aspects of safety legislation without delivering any of the benefits that would come from broad legislative harmonisation. There are fundamental differences between how the mining safety legislation works and how the general work health and safety legislation works. One of the most notable differences is in the identification of statutory positions who have defined obligations under the Acts. There is no equivalent to these so-called "safety critical positions" in a general workplace such as a construction site. Given the role of these statutory positions, the QRC believes it is less relevant in the mining industry to broaden the definition of executive officer than may be the case in the WH&S Act. Doing so will not lead to improved health and safety outcomes. DNRM has never identified a situation where they felt hampered in a desire to pursue someone at the management level by the current legislation.
Ventilation officer competencies A ventilation officer in UG coal mines will be required to hold a certificate of competency granted by the BoE. Since the underground metalliferous sector has a number of small scale mining operations a tiered approach is proposed in that sector. Less than 10 employees will not require a VO; 10-20 will require the SSE to be satisfied re the VO's competency, having more than 20	The QRC supports the proposal, noting however that the QRC does not support additional statutory positions and certification requirements more broadly, unless a clear case is made that they will result in improvements to health and safety. The QRC suggests that the proposed requirement for an	The QRC does not generally support the introduction of additional statutory positions and set competencies in the form of certification by the Board of Examiners, on the basis that no evidence has been presented that the resulting increased resourcing requirements would generate actual safety gains. A number of additional positions and competencies were proposed in the QMSF RIS. These proposals were not supported at that time, in part because a number of those positions will only be attainable by people with specific tertiary qualifications, and having these positions certified by the Board of Examiners would be a duplication and add an additional layer of regulation. The QRC maintained the position that a worker can be demonstrated as being competent with appropriate experience and training. Requiring them to hold a specific ticket (i.e. "competency") does not automatically ensure they are "competent". No clear safety case had been made

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employees will require specific competencies to be held by the VO. There is also a provision to prescribe under regulation the mines to which the new VO competency requirement is to apply regardless of the number of workers.	alternate if the VO is away for more than seven days should be extended to fourteen days.	for the proposal, and QRC was also concerned that the BoE would be unable to cope with the increased workload involved. However, since that response was provided there has been increased emphasis on ventilation requirements due to an improved understanding of the actual level of risk of respiratory disease from respirable mine dust. In recognition of the focus on this issue the QRC has decided to support the proposal for a VO certificate of competency as it appears in the Bill, but wishes it noted that industry still does not support a proliferation of statutory positions with BoE certification more broadly. The QRC is however concerned that the Bill in its current form would require an SSE to appoint an alternate VO if the appointed VO is away for more than seven days. Seven days seems too short a timeframe, and would effectively require every mine to engage two qualified VOs on a permanent basis. This has the potential to become a bottleneck if there are not enough qualified VOs, and it would also impose an unjustifiable additional cost on mine operators. The QRC suggests that 14 days would be a more sustainable and reasonable requirement. The QRC has also previously expressed the view that the BoE needs a significant review into how it operates; in particular, it appears to have needed more administrative support and may need to be escalated to a fully professional operation. While industry remains willing to fund an effective and professional BoE, it does not want to fund it to simply undertake an increased level of certification that it may not be able to perform effectively, and that will not lead to an improvement in health and safety. The QRC suggests that the operation of the BoE could be a matter for consideration by the Project Management Office that will be established by the Queensland Government to undertake consultation with stakeholders regarding the proposal to create a statutory Mine Safety and Health Authority. Presumably, if an MSHA is established it will house the BoE. A broader review of the mining safety and health compliance framework should consider the role of the BoE.

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Continuing professional development The Bill proposes expanding the role of the BoE to include deciding on CPD requirements to maintain certificates of competency. This sets a head of power to create new regulations that will set requirements for practising certificates.	The QRC does not support the proposal for the BoE to decide and impose CPD requirements.	The QRC's response to the 2013 QMSF RIS discussed then "rumours" of an intent to introduce practicing certificates with CPD requirements that would be set by the BoE. QRC's response stated "The QRC is strongly opposed to such a proposal, and if it is to be considered it should be the subject of an open consultation process, not decided unilaterally by the BoE." The proposal in its current form provides no guarantee that certificate holders will have an opportunity to provide input into what an appropriate CPD program looks like. There is no confidence within industry for the BoE to either set those requirements or have the capacity to administer them appropriately. As mentioned above, the QRC is of the view that the function and structure of the BoE should be reviewed through the Project Management Office that will be established by the Queensland Government to undertake consultation with stakeholders regarding the proposal to create a statutory MSHA.
Inspector powers including inspector workplace entry Currently inspectors can enter mine sites but there are legislative gaps in respect to entering some off-mine site workplaces, where activities affecting the safety and health of mine workers may still be carried out. Entry to off-mine site workplaces is sometimes required when the activities at that workplace are relevant to mining.	The QRC is not opposed to the proposal, noting that the amendments may actually be policy neutral, and that the places to be entered are likely to not be operated by QRC member companies. The potential for the proposal to cause jurisdictional uncertainty needs to be considered by the relevant Ministers. The QRC notes there are other effective alternatives already in existence, such as a memorandum of understanding between the	This change to broaden inspectors' entry rights was proposed in the 2013 QMSF RIS, and was not supported by QRC at that time because no evidence had been presented and no safety case had been made to indicate that the additional powers were necessary. The QRC's response stated that existing powers of entry already encompass premises off mine sites, but only so far as the work at that place affects safe operations at a mine, as is appropriate. The QRC understood that the proposed legislative amendment was prompted by a single incident where the Mines Inspectorate felt fettered in undertaking their investigations, and we are uncertain whether there have been any more instances where the Mines Inspectorate has felt restricted in its ability to enter relevant workplaces in the last four or five years. The QRC therefore remains unconvinced that this amendment is required, and feels that this uncertainty suggests that the effect of the amendment on enforcing mining safety legislation may actually be policy neutral. However, the QRC also accepts that, given the off-mine places being discussed would not be clearly linked to the mining operation, their entry by the Mines Inspectorate is likely not to be a

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	safety regulators to overcome these kinds of issues.	matter of particular concern to mining operators. Given the sites being discussed would normally be regulated by Workplace Health and Safety Qld there is as much potential for this proposal to increase jurisdictional uncertainty as there is for it to improve the enforcement of mining safety obligations. The QRC therefore expects that the two safety regulators would have explored this issue at length before proceeding with this change, and that both Ministers are comfortable with how it will operate in practice should it ever be required.
Manufacturer, supplier, designer and importer notification requirements If a designer, manufacturer, importer or supplier becomes aware of a hazard or defect associated with plant or substances that may create an unacceptable level of risk, they must inform the chief inspector.	The proposal is supported.	The QRC supported this proposal when it was originally proposed in the 2013 QMSF RIS, and continues to do so. The proposed amendment can only support the provision of important safety information to the people that could be affected by defects associated with mining plant or by otherwise unknown hazards that are associated with substances used in mining. The QRC believes that this proposal highlights that harmonised safety and health legislation should be more widely considered, as these issues appear to be better dealt with under the WH&S Act. This includes provision for multiple duties under the "PCBU" model and for each 'high risk' activity to have strong controls and lines of accountability that is applicable to that activity.
Contractor and service provider management The Bill will require contractors and service providers to provide their safety and health management information to be considered as part of a single, integrated safety and health management system for all mine workers. It also places additional obligations on the SSE to give a contractor or service provider information about all "relevant components of the mine's SHMS"	The QRC is not opposed to the proposal, but believes that the effectiveness of the legislative requirements need further review through the Advisory Committee processes to address residual concerns regarding contractor engagement and the single SHMS requirement. At the very least a definition of 'contractors' is needed, as it	The 2013 QMSF RIS proposed to amend sections 42, 43, 47 and 62 of the CMSHA and sections 39, 40, 44 and 55 of the MQSHA to cover relevant parts of the non-core drafting instructions of the NMSF model legislation. The QRC supported the approach proposed in the QMSF RIS in principle, but expressed concern that the proposed amendments may be insufficient to provide practical solutions for those dealing with contractor management. It was suggested that a working group of representatives of mines, contractors, the inspectorate and those holding statutory responsibilities in relation to the SHMS should be set up under the advisory committees to develop a proposal that will function in practice. The QRC notes that the final proposal in the Bill is less comprehensive than originally proposed in the QMSF RIS, but suggests that the effectiveness of the

Proposal & Explanatory Note comments	QRC position	QRC comments
required to identify risks and comply with their obligations to integrate their procedures into the mine's SHMS. The Bill requires a management structure to include the name of the person who is responsible for managing the system of work for contractors and service providers.	currently appears to unfairly represent major contractors.	amendments can be reviewed subsequently through the tripartite Advisory Committee process. A number of QRC member companies remain concerned that the explanation given for a single SHMS remains too simplistic and that the 'single' SHMS is in practice not functionally effective. Proper consideration needs to be given to having the mine safety framework follow the model in the WH&S Act and the harmonised regime, whereby risk and hazard management determines the level of accountability and determines whom ought to consult and implement a safety management plan and associated controls. The QRC is also concerned that the approach in the Bill may place an undue emphasis on major contractors and that a definition for 'contractors' is needed. Subcontractors and other contractors, have little accountability, and it is not reasonable or sensible to have the SSE covering all safety matters, particularly when this is not within their expertise. While not stated in the Explanatory Notes, the QRC also notes that under the *Acts Interpretation Act 1954* s32C(a) words in the singular include the plural, providing flexibility under clause 15 for a management structure to name more than one person as responsible for managing the system of work for contractors and service providers.
Advisory Committees and Board of Examiners membership The Bill will increase the number of inspectorate Advisory Committee members from two to three, and nominate the two Chief Inspectors as members of their relevant Advisory Committee and the Board of Examiners by position. The Bill will also provide the Minister discretionary power to appoint a person	The proposals to increase the number of inspectorate representatives to three, and to make the appointment of the chief inspectors by reference to their position titles are supported. The proposal to provide the Minister discretionary power to appoint an appropriate person to the Advisory Committees is supported in principle.	This amendment recognises that the Commissioner is now more independent of the Mines Inspectorate and should not be "counted" as an Inspectorate representative. QRC has supported the independence of the Commissioner, and therefore supports the proposal. The proposal to appoint the chief inspectors by reference to their position titles is supported because it reduces the administrative burden associated with obtaining Ministerial approval for these representatives. The Explanatory Notes advise that the proposal to remove the requirement for mining operational experience to be an Advisory Committee member has arisen because of difficulties in obtaining worker representatives for appointment to the Mining Safety and Health Advisory Committee (MSHAC), but that the proposed

Proposal & Explanatory Note comments	QRC position	QRC comments
to an advisory committee even if the person does not have relevant mining operations experience.		amendments would also apply to the Mining Safety and Health Advisory Committee (CMSHAC) because of a "need to be consistent across both Acts". The QRC believes that the principle of ensuring the 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 CMSHAC having to deal with CWP demonstrates that the Committee could 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.
Safety and health management system (SHMS) requirements The Bill will amend the SHMS requirements for mines and quarries to clarify that it is a "single" system. It will also remove the previous exemption for small mines to have a SHMS to improve safety outcomes for that sector.	The proposal is supported in principle, noting earlier comments that a more comprehensive review of the single SHMS should be undertaken.	The QRC notes that these amendments are a necessary adjunct to the changes to SSE and contractor obligations under the amendments the Bill proposes to those sections, which are supported in principle subject to further review of the effectiveness of the current framework. The QRC Health and Safety Committee has expressed concerns about the high accident rate in opal and gem mines, and has sought to support DNRM and the Mines Inspectorate in addressing those issues. Therefore, while the operators of those small mines are not QRC members, supporting this amendment is consistent with that intent.
Register to be kept by Board of Examiners The Bill will provide for the BoE to keep a register of holders of certificates of competency, SSE notices and notices of registration, including those given to holders of certificates of competency from other jurisdictions under mutual recognition.	The proposal is supported in principle.	The amendment will enable the Board of Examiners to disclose information in the register, other than contact details of an individual, to a person or agency. This will allow operators to confirm that an individual holds a current valid certificate of competency where one is required. The amendment will allow an SSE to better meet their obligations to ensure that persons are competent to undertake safety critical roles. However, QRC has some concern that this issue should be addressed in the context of broader issues relating to the framework for statutory positions, statutory qualifications and competencies in the relevant Act and Regulations. The QRC suggests that these issues require a stand-alone broader review, outside of the scope of this current process.

Proposal & Explanatory Note comments	QRC position	QRC comments
Health surveillance The Bill will provide a clear head of power for both Acts to provide for the long-term health surveillance of workers. It will also affirm that health surveillance of current and former miners is within the objectives of the CMSHA.	The proposed amendments for the CMSHA are fully supported as they are consistent with Monash review recommendations; proposed amendments to the MQSHA are supported in principle.	The amendments are required to better provide for long term health surveillance of coal mine workers, which is consistent with recommendations from the Monash review of the Coal Mine Workers' Health Scheme. QRC has supported all of the Monash recommendations, so supporting this amendment is consistent with that position. The MQSHA does not currently have an equivalent government administered surveillance scheme, and the proposed amendments would support the establishment of such surveillance. While supporting this change for the MQSHA in principle, the QRC reserves the right to consider any further recommendations from the CWP Parliamentary Select Committee related to health screening in the metalliferous sector when they have completed their inquiry into respirable dust.
Notification of diseases The Bill will amend s198 CMSHA and s195 MQSHA to provide that a person prescribed by a regulation must advise the Chief Inspector if they are aware that a worker has been diagnosed with a reportable disease.	The proposed amendments are supported in principle, however the QRC believes that further amendment is required to ensure that SSEs are made aware of all health issues that are likely to pose a safety risk at the mine. The QRC also believes that further legislative amendment is 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.	The CMSHR and the MQSHR currently only require an SSE to notify the mines inspectorate when they become aware of an occurrence of a prescribed disease. Under the current Health Scheme an SSE is only notified whether a person is "fit for duty" or not. This amendment will expand the notification requirements to other persons yet to be specified by Regulation. While the QRC expects that those regulations will specify the medical practitioners who are diagnosing the disease will have the obligation, this matter would be clarified if the proposed regulation amendment had been included in the Bill. The QRC has long advocated for greater disclosure of health conditions that are relevant to health and safety at a mine. This has been stridently opposed by the CFMEU. The Monash review highlighted the need to disentangle the issue of fitness for work from health surveillance, and the QRC believes that this recommendation has not been fully addressed. The 2013 QMSF RIS stated at page 106 "It is therefore proposed that s.42 of the CMSH Regulation will be amended so that the fitness for work hazards will be managed as a hazard through a SOP and the SOP is to be developed in the same way SOPs are developed for other hazards at a mine". The QRC was supportive of the proposal at that time and is disappointed that it has not been progressed.

Proposal & Explanatory Note comments	QRC position	QRC comments
		Recent changes to Part 4 of the health assessment form means that the employer will now be notified of a prescribed disease. Where the worker is an employee of the same company as the SSE, then the SSE would expect to be advised. However, if the worker is a contractor employee, then the SSE may not become aware of any serious health concerns as there is no obligation to notify the SSE. Therefore, the QRC believes there should be an obligation on either the medical practitioner or the employer to notify the SSE. It would be simpler and quicker if the obligation was on the practitioner to notify both the SSE as well as the Department. It is essential that SSEs are notified of any prescribed diseases or other serious health concerns, given their duties and obligations for the health and safety of workers. Notification allows the SSE to: · ensure appropriate support can be offered to the individual; and · understand whether there are any emerging patterns indicating systemic problems with the management of health hazards at their site.
Release of information The Bill will extend DNRMs current reporting powers to include HPIs or "any other matter that may be relevant to persons seeking to comply with their safety and health obligations", and ensure the State does not incur a liability for any information provided under the section in good faith. The amendments also extend the current provision for the release of a public statement about the cancellation of a certificate of competency to also	Proposed amendments to improve the ability of the Inspectorate to disseminate information about accidents, HPI and other matters to industry are supported in principle, provided adequate protection of personal information is provided. The QRC supports in principle the proposal to extend the current power to make a statement to cover the cancellation of an SSE notice,	A request for DNRM to release comprehensive safety alerts as soon as possible was frequently raised with the Chief Inspectors through QRC's SSE/GM forums. The QRC therefore supported a proposal in the 2013 QMSF RIS to improve the capacity to do so, and that support continues. The QRC notes the proposal to provide for a public statement regarding the cancellation of an SSE notice, however the QRC does not support the proposed process for the cancellation of an SSE notice, as discussed previously. Commonwealth and National Privacy Principles contain appropriate mechanisms to protect individuals' personal information, and any disclosure outside of privacy legislation is inappropriate. This is a fundamental common law right, and must not be undermined. If unavoidable, then at least a strict process and other obligations and independent oversight need to be mandated.

Proposal & Explanatory Note comments	QRC position	QRC comments
include the cancellation of an SSE practicing certificate.	but only where the cancellation occurs due to it being obtained by fraud, or where it is ordered by a court. The QRC does not support the proposed process for the Chief Executive to cancel a notice or certificate, so the issue of a statement in those cases does not arise.	

QUEENSLAND resources COUNCIL

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APPENDIX B QRC comments on changes made to the 2018 Bill

Clause in 2018 Bill and difference to 2017 Bill	QRC comments
Clause 6 – replacement of s34 (clause 5 in 2017 Bill) The penalties associated with section 34(d) have been further increased in relation to the 2017 Bill to: 1. 7500 PU for a corporation (from 5000 PU) 2. 1500 PU for an officer of a corporation (from 1000 PU) 3. 750 where the offender is other than a corporation or officer of a corporation (from 500)	No reason had been provided for this change; while these penalties were discussed by CMSHAC there was no resolution that they be further amended. The CFMEU raised a concern that a current penalty was being "lowered" by the 2017 Bill, however Operator representatives noted that if the offence under part (d) was committed by a corporation then the penalty would increase from 750 PU to 5000 PU and if the offence was committed by an "officer of a corporation" it would be 1000 PU or one year's imprisonment; it was only in "other circumstances" where the penalty would be 500 PU instead of the 750 PU that applies in the current legislation. The QRC notes advice provided to the Committee that the 2017 Bill contained a drafting error, however still does not support this further increase in penalties because it was not requested by CMSHAC when it was discussed.
Clause 13 – insertion of new Part 3, Division 3A (clause 12 in 2017 Bill) The 2018 Bill inserts an example that demonstrates the linkage between the new section 47A(3)(f) and the existing section 41(1)(f).	This is consistent with the CMSHAC resolution that the new section should ensure that a copy of the outcome of an effectiveness review of the Safety and Health Management System of the mine required under 41(1)(f) must be given to 'officers' of the corporation to support their proactive obligation to manage risk. The QRC supports this amendment in principle because linking these provisions had unanimous support at CMSHAC, however the QRC maintains its opposition to the change in application of the obligation from "executive officer" to "officer".
Clause 16 – amendment of s55 (clause 15 in 2017 Bill)	This is consistent with CMSHAC resolution that the section should not refer to a system of work as that might impose a requirement on the person to understand the processes utilised by specialist contractors, which would be impossible to guarantee.

Clause in 2018 Bill and difference to 2017 Bill	QRC comments
The wording of 55(2)(ca) has been amended to read 'the name of the person who is responsible for establishing and implementing a system for managing contractors and service providers at the coal mine	The QRC supports the amendment because the new wording will address concerns raised by Operator representatives that the section should only refer to the system of managing contractors – not to the systems of work those contractors employ.
Clause 17 – replacement of s61 (clause 16 in 2017 Bill) The words "Site Senior Executive" have been omitted from section 61(6) in the 2018 Bill Subsections 61A(3) & (4) have been omitted from the 2018 Bill.	This is consistent with CMSHAC resolutions that reference to Site Senior Executive needs to be removed from section 61(6) as only the Underground Mine Manager can appoint a ventilation officer in this circumstance described, and to clarify that, if the Underground Mine Manager has the competencies, they can fulfil the role of ventilation officer for up to 7 days if the ventilation officer is absent from the mine without someone being appointed. While the QRC supports the amendments we note that CMSHAC also resolved that the Bill should include definitions of the terms 'temporarily absent from duty' and 'not in attendance' to support the intent of these sections.
Deleted clause – amendment of s80 (clause 21 in 2017 Bill) This clause has been omitted in the 2018 Bill.	The QRC supported in principle the amendment to s80 proposed in the 2017 Bill – provided it did not detrimentally affect the operation of the Advisory Committees. The matter was discussed by CMSHAC and the provision was opposed by CMSHAC members. The QRC however, still maintains the same level of in-principle support for the proposed amendments. The approach to interpreting the current experience requirement for Committee members is narrow and this means that the Committee may miss out on important expertise in areas such as health and hygiene, as demonstrated by the re-identification of CWP – due to a narrow focus on "operational experience". The Committees may benefit from being able to advise on all aspects of the Act and Regulations, including health and safety, and interpretation of the Act and Regulations. The QRC also questions whether the removal of this proposed amendment will pose an issue for MSHAC membership into the future, and whether CMSHAC advice is broad enough consultation on the

Clause in 2018 Bill and difference to 2017 Bill	QRC comments
	question of whether or not removing the operational experience requirement would adversely affect the functioning of either Advisory Committee.
Clause 27 – amendment of s186 Section 186 will now require that one member on the BoE must have a first-class certificate of competency for an underground coal mine and one member must hold a first-class certificate for underground metalliferous mining.	This is consistent with the CMSHAC resolution that the effectiveness of the Board of Examiners would be diminished if there was not a member on the Board who held a first-class metalliferous ticket. While the IPNRC had recommended that the Bill be amended to ensure that both Chief Inspectors hold a relevant first-class Certificate of Competency to address this issue this will achieve the outcome without affecting the employment of the current Chief Inspector. The QRC supports this change in the 2018 Bill.
Clause 44 – insertion of new part 15B There are minor wording changes, for example s267G(3)(d), s267I(1)(a)&(b) that do not alter the application of the penalty provisions or the quantum of the penalty.	The QRC does not support the introduction of civil penalties of the quantum proposed by the Bill, but would support the introduction of a similar system of civil penalties that applies under the *Work Health and Safety Act 2011*.
Clause 45 – amendment of s275AC There are minor wording changes, for example s275AC(1)(d) and s275AC(4) that do not alter the intent of the provisions.	The QRC does not oppose this change to the Bill.
Clause 47 – insertion of new part 20 div 7 The transitional provisions related to the grace period for obtaining a ventilation officer certificate of competency have been amended.	This is consistent with the CMSHAC resolution that the provisions within the 2017 Bill that granted a transition period of up to six years under certain circumstances to obtain a ventilation officer certificate of competency was excessive. While the QRC supported the transitional provisions in the 2017 Bill the amendments are not opposed on the basis that they received unanimous support at CMSHAC.