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Office of the President

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Our ref: (VK/M&R)

Committee Secretary  
Education, Employment and Small Business Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email: [eesbc@parliament.qld.gov.au](mailto:eesbc@parliament.qld.gov.au)

Dear Committee Secretary

### **Mines Legislation (Resources Safety) Amendment Bill 2018**

Thank you for the opportunity to provide comments on the Mines Legislation (Resources Safety) Amendment Bill 2018 (the **Bill**). Queensland Law Society appreciates being consulted on this important legislation.

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote nearly 13,500 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled with the assistance of the Mining & Resources Law Committee, whose members have substantial expertise in this area.

QLS has reviewed the Bill and commends the Government on its efforts to instigate reform initiatives which provide greater accountability and improved health and safety systems within the mining safety framework. We have identified some aspects of the Bill which we consider require further review and amendment.

#### **Penalty Severity**

The penalties imposed with respect to some aspects of the proposed legislation are significant. QLS is concerned that adequate justification for the introduction of harsh penalties has not been provided.

At a minimum, and to mitigate the risk of a disproportionately harsh penalty being applied improperly, we suggest that where an obligation in the Bill attracts a penalty (see for example, clauses 6 and 53), the drafting should be amended to reflect similar provisions in the *Work*

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*Health and Safety Act 2011*, which explicitly includes an opportunity for a person or corporation to provide a 'reasonable excuse'.

**Powers of Entry**

As a general comment, powers of entry must be carefully drafted as the exercise of such powers will amount to an intrusion on a person's rights which have been granted under an existing right to occupy the land. The strong preference of QLS is that entry to places should generally only be exercised with a valid warrant, the consent of a landholder or following an appropriate notice period.

QLS notes that section 4(3)(e) of the *Legislative Standards Act 1992* provides that legislation should generally confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Clauses 23, 24, 70 and 71 of the Bill provide an officer with the power to enter places, including residential premises, without the authority conferred by a search warrant. There is no further guidance provided to assist an officer with respect to the circumstances that support holding a 'reasonable belief' that a property is a 'suspected workplace'. This would appear to be particularly difficult if the suspected workplace is part of or attached to a residence.

QLS recommends that Departmental guidelines be prepared, and training given, to provide appropriate guidance to an officer who might exercise these significant powers of entry.

**Double Jeopardy**

As the Bill currently stands a person can be issued a not insignificant administrative penalty and still be prosecuted for the same non-compliance.

QLS notes that the Bill explicitly disallows the issuing of a civil penalty after a criminal conviction. QLS strongly suggests that the Bill be amended to include a declaratory statement to the effect that a criminal prosecution cannot be pursued after a civil penalty has been imposed for the same non-compliance. Further, it is improper that a civil penalty may be issued (under proposed section 267J) when a criminal proceedings ends in conviction or with the corporation being found guilty for a corresponding offence.

We suggest that a prosecutor should be required to make a clear election, when investigating a non-compliance, whether the prosecutor will pursue a civil penalty or criminal prosecution arising from the non-compliance.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Vanessa Krulin by phone on (07) or by email to

Yours faithfully

Ken Taylor  
**President**

