7 September 2017

Mr Duncan Pegg MP
Acting Chair Infrastructure, Planning and Natural Resources Committee
Committee Secretary
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane Qld 4000

Email : ipnrc@parliament.qld.gov.au

Dear Mr Pegg,

I refer to the inquiry of the Infrastructure, Planning and Natural Resources Committee into the policy to be given effect by the working draft of an exposure draft of the *Mine Safety and Health Authority Bill 2017* (the working draft Bill), which was tabled in Parliament by the Coal Workers' Pneumoconiosis Select Committee along with its Report No. 3 on 24 August 2017.

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 and environmentally sustainable way.

The working draft Bill is of direct importance to the operations of the majority 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 was collectively shocked to discover that the health screening process they had placed enormous faith in to detect any respiratory health problems in the coal mining workforce had become so dysfunctional.

Industry has consistently sought to assist the Government to address the risk of coal workers' pneumoconiosis (CWP) since its re-identification in late 2015, both at the health assessment level and in the critical process of preventing exposure. At every step, the mining industry has cooperated over this issue, be it with Federal or State inquiries, or with Minister Lynham and the Department of Natural Resources and Mines. Where it could take the lead, it has done so – the QRC was instrumental in initiating the process that led to the amendment of the Workers' Compensation legislation to ensure it was an effective safety net for affected workers.

Significant progress has also been made in correcting the deficiencies in the coal mine workers' health scheme, and in the compliance framework for controlling and monitoring respirable dust.

Industry will continue to cooperate with every reasonable additional initiative to address this problem; where there is an evidence-based, clearly defined reason for taking new action, we will do so. However, where solutions can be found by using or adapting existing processes, that should be done, as was the case for the workers' compensation amendments. Where new processes are proposed then they need to be justified through a transparent and accurate assessment of the costs and benefits. The QRC believes that the process for the consideration of the working draft Bill is significantly flawed in this regard.

The QRC made two submissions to the CWP Committee inquiry under its first terms of reference and appeared before the Committee to give evidence, as did all our major coal producing members. The QRC's first submission focused on the factors that allowed what everyone thought was a disease of the past to again come to the fore, while the second submission focussed on what was needed to address the respirable coal mine dust hazard. Some of that material is repeated in the attached submission, as the QRC sets out its concerns related to the major policy implications of this Bill.

In summary, the QRC does not support the majority of the Bill for the following reasons:

1. No analysis of costs and benefits

Without the rigor imposed through the preparation of a Regulatory Impact Statement (RIS) neither the stakeholders nor the Infrastructure, Planning and Natural Resources Committee can assess the benefits and costs of having a statutory Mine Safety and Health Authority (MSHA) based in Mackay. No evidence has been put forward that the current compliance framework is fundamentally flawed, and without any contrary evidence the QRC is of the view that all of the problems identified that have resulted in the reidentification of CWP can be addressed through existing processes under the existing framework.

The QRC believes that the proponent of such a significant change has the responsibility to demonstrate that there is a need for that change. In the absence of such validation, when the current regulatory system has delivered an overall safety record second to none, the QRC believes there is no case for establishing the MSHA.

2. No consideration of broader implications

The Bill is extremely coal dust-centric and it does not cover many of the other functions that the MSHA would be responsible for in the broader context of mining safety and health. That is simply because those issues have not been considered, being outside the terms of reference of the CWP Inquiry. The QRC believes that the CWP Committee should not be formulating proposals that affect issues so far outside of their terms of reference.

3. Unnecessary sense of urgency

The Bill has been put forward under an unnecessary sense of urgency. There are a range of measures that are truly urgent, and these are being addressed through

amendments to the Coal Mine Workers' Health Scheme and dust monitoring and reporting requirements. The creation of a new compliance framework is not an urgent issue, it has not been demonstrated to be necessary to ensure the safety and health of Queensland resource industry workers, which is the priority. Furthermore, the creation of this new framework may in fact distract from the work that is truly urgent, that being the implementation of the recommendations of the Monash review, which the QRC have consistently supported.

4. The Bill appears incomplete and is only a "working draft"

The working draft Bill does not appear to cover all the consequential amendments that would be required for the policy proposals it contains; in fact, there are virtually no consequential amendments apart from aspects related to the role of the Commissioner which would be omitted from the *Coal Mining Safety and Health Act 1999*. Because the legislative reform process has lacked the rigor that would normally apply to a department proposing such change, it is impossible to know if apparent omissions are an oversight or whether the CWP Committee has changed its mind on some issues. If there had been a consultation RIS with the full policy proposal and then a decision RIS when the Bill was introduced, then that RIS would have spelled out what has changed as a result of consultation.

Areas where the Bill appears to be incomplete when compared to the CWP Committee recommendations include but are not limited to:

- It does not remove the existing funding model under the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*. Under the working draft Bill, as it stands, industry will pay twice.
- The proposed abolition of the two Safety and Health Advisory Committees on the basis that the CWP Committee found they would not be required under the proposed MSHA model.
- Section 67(3)(b) refers to a "Coal Workers' Health Scheme". While the CWP Committee has recommended renaming the scheme to reflect a broader range of workers who might be exposed to respirable coal mine dust, currently there is no such scheme, it remains the Coal Mine Workers' Health Scheme.

Note that pointing out these discrepancies does not infer QRC support or otherwise for the apparently missing elements – just our uncertainty.

Our uncertainty over the status of the working draft Bill is compounded by the fact that it has been watermarked "Working draft only", but is referred to as an exposure draft in the report. This raises the prospect that the final version of the exposure draft has not been provided, and that an earlier draft might have been attached to Report No. 3 of the CWP Committee in error.

The overall impression is that the report and working draft Bill has been tabled and referred for scrutiny simply to meet the CWP Committee's deadline of introducing legislation by August. If that is the case, and that deadline has been met by circumventing the regulatory assessment process then the CWP Committee risks wasting the time of the Parliament, the Infrastructure, Planning and Natural Resources Committee, and all the stakeholders who are providing input to this process.

5. Lack of clarity around key policy components

The QRC believes that the new funding model is unnecessary, particularly if a very expensive and unwarranted new compliance framework is not introduced. However, putting aside our lack of support for the concept in principle, the working draft Bill is unclear about how this policy would be delivered. Also, as mentioned previously, unless the current funding model is revoked, industry will end up paying twice. However, not only is there no justification for changing the funding model, the proposal to do so appears to present practical difficulties that may make it an unworkable solution. Resources production goes up and down, as do commodity prices, and thus the quantum of royalties collected fluctuates widely for a range of reasons that are completely unrelated to the costs of mining safety and health compliance services. Again, without a RIS exploring the policy intent or costs and benefits of the proposed change, or the intended regulation that might deliver the detail, it is impossible to tell how this would be addressed.

6. Industrialisation of safety and health provisions

The QRC does not support the proposal to remove the requirement for Industry Safety and Health Representatives (ISHRs) and District Worker Representatives (DWRs) to give reasonable notice of an inspection. The QRC has over a long period expressed concern over the misuse of powers by ISHRs, both in practice and as a threat to win concessions against mining companies. While the same concerns have not arisen in the case of the DWRs it still defies reason why this requirement would be removed for either type of representative. They lack the impartiality of the regulator, and the proposal represents a very dangerous escalation in the power and influence of the CFMEU.

The QRC supports in principle the policy intent under Parts 4 and 5 of the working draft Bill to increase stakeholder representation in forming compliance policy and to ensure the independence of the role of the Commissioner for Mine Safety and Health, but not within the framework of the MSHA.

Yours sincerely

Ian Macfarlane
Chief Executive

QRC Submission

To: The Infrastructure, Planning and Natural Resources Committee

On: The *Mine Safety and Health Authority Bill 2017*

ABN 59 050 486 952
Level 13 133 Mary St Brisbane Queensland 4000
T 07 3295 9560 F 07 3295 9570 E info@qrc.org.au
www.qrc.org.au

Introduction

The Queensland Resources Council is pleased to provide this feedback on the policy initiatives within the working draft of an exposure draft of the *Mine Safety and Health Authority Bill 2017* (working draft Bill), which was tabled in Parliament on 24 August and referred to the Infrastructure, Planning and Natural Resources Committee to consider the policy to be given effect by the working draft Bill and its application of fundamental legislative principles.

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 and environmentally sustainable way.

The draft Bill is of direct importance to the operations of the majority of QRC member companies, including the major coal mine and metalliferous mine operators and service companies associated with the Queensland resources industry.

The QRC does not support the majority of the policy proposals within the working draft Bill. The reasons for this are set out under three main sections that cover the primary policy changes that would be delivered by the legislative amendment.

The QRC does support the policy intent under Part 5 of the working draft Bill to ensure the independence of the role of the Commissioner for Mine Safety and Health, and the concept of greater stakeholder input as suggested by Part 4, but not within the framework of a statutory Mine Safety and Health Authority (MSHA).

Policy issue 1: A Statutory Mine Safety and Health Authority

Basis for the proposed policy change

The QRC does not accept that the underlying reasons for establishing the MSHA are valid or that the case for such fundamental change has been adequately made. The QRC continues to believe that there is not one group of people or organisation that is to blame for the re-identification of CWP. While employers, along with the Department of Natural Resources and Mines (DNRM) and its inspectors, the health sector and the unions all have a shared responsibility, it is counterproductive and backward-looking to apportion blame.

Unfortunately, the report of the CWP Committee into the re-identification of CWP does not take this approach. It has sought to apportion blame, and even infers that there were deliberate decisions that placed coal mine workers at risk and sought to downplay that risk. This is reflected in the unjustified inclusion of the word "lies" in the title of the Committee's report. An unreasonable proportion of the blame has been placed on DNRM, which was singled out for its "culture and attitude" and for its senior officers being "argumentative and resistant to acknowledging the wide-ranging failures of their department". The actual evidence of this behaviour presented within the report was not substantial. The extent to which DNRM officers had difficulty in answering some of the CWP Committee's questions appears to reflect the fact that when the Inquiry started there was no-one in a senior position within the department who had long term knowledge about previous decisions that went to the matters being inquired about. If those senior bureaucrats did develop a siege mentality, that does not necessarily reflect a long term organisational culture.

To the QRC, an unbiased critical analysis of the performance of the regulator would show only that there were a series of resourcing decisions made within the responsible department that contributed to the drift to failure of the health scheme over a number of years. The reasoning behind these decisions was simply an under-estimation of the risk of CWP, with the predisposing factor that no-one in the Queensland coal mining industry had heard of the disease for many years. If anyone had identified a higher level of risk then those resourcing decisions would have been different. Everyone involved in the industry was responsible for that under-estimation, including the operators, the union and the medical experts.

There were also other factors that contributed to the drift to failure of the scheme, which are discussed at length in the QRC's first submission to the CWP Committee's Inquiry. This includes the entanglement of coal mine workers' health assessment with fitness for work and the Union's resistance to additional medical assessment beyond the tests that were legislated. This made adapting and amending the scheme impractical, and it made maintaining a clear focus on health surveillance impossible. These issues have not been acknowledged or addressed in any way.

No analysis of impact and ways to achieve policy outcomes

The QRC is strongly of the view that the proponent for such a significant change has the responsibility for demonstrating that there is a need for that change. Normally a proposal like the one to create a statutory MSHA would be subject to the Government's regulatory assessment process, and given the likely cost associated with this proposal, the Treasurer would require a Regulatory Impact Statement (RIS) before it would be considered by Government.

Following the release of the CWP Committee's report, which included recommendations around the establishment of the MSHA, the QRC wrote to the Chair of the CWP Committee expressing the view that there needed to be a RIS to investigate the costs and benefits of the proposal. It is disappointing and perplexing to the QRC that a RIS has not been prepared and we seek advice as to the circumstances under which exemption from a RIS has been granted. The QRC's understanding of reasons for obtaining exemption from this process is set out in Attachment A. The changes in the working draft Bill are not minor; no analysis of their impact has been done; the existing compliance framework does not present an imminent risk to safety; and the recommendations of the CWP Committee do not represent Government policy, since they have not to our knowledge been endorsed by Cabinet.

Normally a RIS would have to clearly state the policy intent and quantify the benefits of the proposal, as well as document the costs and benefits of alternative approaches. In this case the QRC would expect that at least two alternatives would be canvassed, those alternatives being the status quo and the delivery of desired changes under the existing regulatory model, i.e. changing the system within DNRM to improve accountability and to re-establish worker confidence in the system. For example, if a stakeholder Board is needed, then that could potentially be established within the DNRM governance framework. Those Governance arrangements could also provide for the independence of the Commissioner.

The QRC believes that it is virtually impossible for industry or anyone else to make an accurate assessment of the impacts of the working draft Bill without the kind of information normally provided within a RIS. Equally it is difficult to see how the Infrastructure, Planning and Natural Resources Committee can accurately assess the policy that will be given effect by the working draft Bill without the kind of information that is normally contained within a RIS. At the moment, we do

not even have a rough estimate of the additional costs associated with establishing an MSHA, which is discussed further under Policy Issue 2.

Proposal outside scope of ToRs

It is the QRC's view that a proposal to establish the MSHA is outside of the scope of the CWP Committee's terms of reference, as it would impact not just the administration of the coal mine workers' health scheme and dust regulation, but all aspects of resources health and safety. Those impacts will be felt not just by the coal sector, but also by metalliferous mining and quarrying, and potentially even the petroleum and gas sector. The implications for these sectors have not been considered by the Committee or addressed in its report which was ostensibly about the coal mining industry, and the Committee is yet to finalise its inquiry into metalliferous dust exposure.

No consideration of broader implications

The stated functions of the MSHA within the working draft Bill have an undue focus on mining dust management. Four of the nine listed functions relate specifically to dust, and a further three relate to health assessment, which is primarily focused around respiratory health. In addition, the Bill would create two committees, both of which are related to dust.

The dust and coal-centric nature of the working draft Bill is perhaps also most clearly demonstrated by the proposal to base the MSHA in Mackay (clause 10). This might make more sense if the only focus was going to be the Bowen basin coal mining industry, but the Queensland resources industry is distributed far more widely than that. If the regulator's headquarters are moved to a regional centre, then it would be isolated from all the other relevant government departments, making coordination and information sharing even harder. The lack of such interdepartmental cooperation was a serious failing that was identified by the CWP Committee, and that fact seems beyond dispute.

The QRC is also concerned that establishing and transitioning to a new body, particularly one that is based in a regional city like Mackay, would inevitably cause significant disruption to critical ongoing safety and health compliance services as well as result in significant additional establishment costs. It may also delay important improvement initiatives that are currently being developed or implemented to manage the risk presented by respirable coal mine and metalliferous mine dust. It could also result in the loss of key staff, making it difficult to establish a critical mass of personnel with the required specialist skills. Existing attraction and retention issues will be exacerbated, noting that the Mines Inspectorate already struggles to attract and retain the best inspectorate candidates from industry, which is the only source of people with the appropriate skills.

No guarantee of improved outcomes

The QRC believes that the MSHA model proposed by the CWP Committee, which has parallels with the US Mine Safety and Health Authority governance model, would provide no guarantee of improved safety and health outcomes. The Queensland resources industry prides itself on being a world leader in health and safety, and the safety statistics of our industry are superior to other Australian industries and equal or better than other resource industries around the world. As an example, over the last ten years the fatality rate in the US coal mining industry has been about six times that of Queensland's coal mining industry.

This does not mean the Queensland mining industry can rest on its laurels – far from it. Any workplace fatality is too many; any incidence of serious injury is too much, and any occurrence of occupational disease is unacceptable. The only reason our industry is a world leader is that we strive to improve, and we will continue to do so. But we should be aware, if we are contemplating

modelling our system on that of other jurisdictions, of the full picture of their safety and health performance.

Justifying the introduction of a statutory authority because that is what the US has, in the belief that the US is better at monitoring dust and undertaking health screening is a spurious argument. If they are, why are the rates of CWP, including complicated forms of the disease, so high? Further, the assumption seems to be that if having an MSHA helps with respiratory health then it would be good for everything – however QRC remains to be convinced that it would even lead to an improvement in the respiratory health area. If the US regulatory model is so much better overall, why is their fatality rate so high? There are obviously significant differences in the legislative framework in Australia and the US that make direct comparisons between individual components in isolation largely meaningless; however, it is clear that each jurisdiction can and does learn from the other.

In regard to CWP, the main lesson we are taking from the US is how to undertake an effective respiratory health screening program to the ILO International Classification of Radiographs of Pneumoconioses. Arguably their scheme would benefit if they could adopt the compulsory nature of the Queensland health assessment scheme.

The QRC has fully supported the adoption of a dual X-ray reader system based on the NIOSH B Reader system, and that system is currently under development by DNRM. The QRC has also always advocated for summarised and de-identified health scheme data to be analysed and used in evidence based decision making. The QRC has made repeated submissions on that issue, and again DNRM is currently developing an effective medical surveillance database to make that possible.

These matters were dealt with in the Monash/UIC review – which the QRC fully supported and is cooperating with DNRM in implementing. They do not need a statutory Authority to be delivered.

Compliance-based V risk-based approach

The final concern that the QRC has about the statutory authority approach, is that it seems to be a step towards a more compliance based framework, and therefore a diminution of the risk-based approach.

While it can be argued that there was a failure in the risk-based approach regarding respiratory screening for coal mine workers, that was because there was a gross underestimation of the level of risk involved. The Queensland mining industry needs to complete the journey to risk-based regulation, not to take a backward step towards a simple police mentality that health and safety is the business of the regulator in the form of an Authority. Health and safety is everyone's business.

The failures in relation to CWP were every-one's failures, so we should seek to fix the problems under our current tripartite-based model and not throw out a framework that is generally sound overall.

An important lesson from the re-identification of CWP is that industry needs to get better at periodically critically assessing industry-wide risks, and that it needs to question past assumptions about the understood level of risk associated with mining hazards. Not seeing any adverse impacts resulting from a hazard does not necessarily mean that the risk arising from that hazard is being managed appropriately. Moving to a more compliance-based approach will not be conducive to the better identification of hazards and improving the understanding of actual levels of risk.

Policy issue 2: Proposed funding model

Lack of clarity

As discussed in the previous section, the working draft Bill seeks to introduce a new funding model, particularly through the attainment of a "prescribed percentage" of mining royalties under clause 70(1)(a). The prescribed percentage is defined only as the "percentage prescribed by a Regulation", and no draft regulation has been provided for comment, so no detail on the actual proposal is available. The CWP Committee is essentially asking the Parliament, industry and the community to sign off on a blank cheque.

The QRC believes that the expenditure of royalties is a matter for the State to decide, but understands that those royalties are generally regarded as a means of providing benefit to the community for commercial access to the resources the community owns, but are administered on their behalf by the State. The QRCs concern is that unless the State decides to divert some of the funds it currently collects, then the royalty rate will need to be increased to cover any additional costs arising from the proposed new compliance framework. With no indication of the cost of the MSHA there is no way of knowing what the total increase in cost will be, and without a detailed regulation there is no way to determine how the royalty derived funds will be managed.

Practical difficulties

One of the most difficult aspects of managing such a fund appears to be that the quantum of funds collected could be subject to a very high rate of fluctuation. Resources production goes up and down with demand and commodity prices, and the quantum of royalties collected will follow a similar trajectory. The size of the fund will therefore fluctuate widely for reasons that are completely unrelated to the costs of mining safety and health compliance.

The QRC therefore anticipates that, to cover the contingency that income from resources royalties could in the future go down significantly, there will initially have to be a relatively high proportion of royalties kept aside to build a reserve. Initial set-up costs are also likely to be high. Monies collected that are additional to the actual funding requirements will have to be carried over, and it is likely to be many years before the fund is stable, if it ever is.

Given the prospect that the MSHA will be expected to cover the Coal Mining, Metalliferous and Quarrying, Petroleum and Gas and explosives industries, the funding model would have to consider royalties from all minerals including mineral sands, construction materials, base metals, precious metals, gemstones, petroleum as well as coal. The QRC believes that the uncertain and generally unrelated fluctuations in the value of these vastly different commodities would make the proposal impractical to administer.

This uncertainty and fluctuation compares to the more stable option of continuing with the current funding model. While imperfect and lacking transparency, the current safety and health fee system at least provides a relatively quick response to increasing activity in the resources sector by being linked to the number of people employed in the industry. Employment provides a unitised measure of the level of compliance activity required in the mining sector; an imperfect measure, but nonetheless one that is likely to be more accurate than royalties.

As a way to examine the possible disconnect between the royalty funded model and compliance needs, an analysis could be conducted to examine what would have happened during the last resources cycle, particularly the down-turn in the coal mining industry immediately after the boom that occurred from around 2009 to 2014. During that period, employment in the coal industry was

high; however, for much of that time coal production did not fully reflect the level of employment activity within the sector. As coal prices rose there was a lot of development being undertaken, in the anticipation of a healthy return on investment once those developments could go into full production. Counter intuitively, as the coal price began to decline, many of those developments were coming onto line, so coal production went up as employment fell. This in turn put further downward pressure on prices, and returns on that production, including royalties, fell further.

The development phase of any resources cycle would typically see higher levels of employment in the industry, and the risk profile of the industry is more varied in that period. So even if the actual level of total risk did not increase during the development surge in the last cycle, which is arguable, the compliance demand would have increased simply by virtue of the fact that there was a greater range of activity occurring at an increased number of sites. Employment levels would reflect that fact better than royalty returns.

The QRC believes that this example demonstrates how there could be a total disconnect between the level of funding available through a set percentage of royalties, and the requirement for compliance services in the mining sector. Again, without a RIS that explores the policy intent and the costs and benefits of the proposed change it is impossible to tell how this type of disconnect might be addressed.

In addition, the periodic review referenced in the working draft Bill does not provide any of the necessary criteria for assessing the funding requirements (e.g. MSHA costs, health and safety outcomes), nor the frequency of review.

Policy issue 3: ISHR and DWR powers

The QRC does not support the proposal to remove the requirement for Industry Safety and Health Representatives (ISHRs) and District Worker Representatives (DWRs) to give reasonable notice of an inspection. The QRC has over a long period expressed concern about the misuse of ISHR powers, both in practice and as a threat to win concessions against mining companies. While the same concerns have not arisen in the case of the DWRs it still defies logic why this requirement would be removed for either type of representative. These worker representatives are not the regulator, and they lack impartiality.

There have been numerous occasions where an ISHR has issued a directive under section 167 of the CMSH Act which has subsequently been overturned by the Chief Inspector. While in many cases the time taken to overturn a directive is not long, there are many other cases where placing the directive has been deliberately timed to make it more difficult to have it lifted. There can also be constraints on the Inspectorate lifting a directive, even when it is clear that an inspector would never have imposed such a directive.

While such circumstances involving actual use of the power is enough to demonstrate the powers are being misused, the QRC has also been advised by many of its coal mining members that these powers are most often used as a threat. To use health and safety powers in this way is completely unacceptable to the QRC. To embolden ISHRs by removing the requirement to provide reasonable notice increases the risk of this sort of behaviour.

The cost to mines of ceased operations is enormous, even for periods of a few hours, let alone days. Foregone production, impacts of take or pay contracts for rail transportation, demurrage on shipping and re-commencement of operations costs all add up for the company affected. The cost to the State is in foregone royalties, and damage to Queensland’s reputation as a reliable supplier.

To further emphasise the extraordinary nature of this power, it should be noted that section 276 of the CMSH Act makes ISHR's immune from liability and redirects liability to the State of Queensland.

276 Protection from liability

(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

Schedule 3
official means...
(j) an industry safety and health representative; or
(k) a site safety and health representative..

In other words, the State has to pick up the cost of misuse of the power by a union official, not the offending ISHR. With potential losses of over $2.5M per day the risk of a substantial claim being made against government for a directive over which it had limited control, should not be ignored.

Apparent deficiencies and other aspects of the Bill

Outside of the major policy components of the working draft Bill discussed above, the QRC would like to place on the record its position regarding a number of other relevant features.

Lack of consequential amendments

The working draft Bill does not appear to cover all of the consequential amendments that would be required for the policy proposals it contains; in fact, there are virtually no consequential amendments apart from changes to the role of the Commissioner which would be omitted from the Coal Mining Safety and Health Act 1999.

Most notably, while it introduces a new funding process through Part 9, the working draft Bill would not remove the existing funding model under the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*. Unless the intention is to charge mining companies twice for health and safety compliance services, surely the current Safety and Health Fee would need to be removed from the legislation? The removal of the fee was certainly the CWP Committee's recommendation in its report.

The CWP Committee also recommended the abolition of the two existing Safety and Health Advisory Committees on the basis they would not be required under the proposed statutory authority model – yet there are no consequential amendments related to those Committees. Is this an oversight, has the CWP Committee changed its mind, or is this because the working draft Bill is not the correct version? This uncertainty highlights that the legislative reform process lacks the rigor that would normally apply to a department proposing such change. If there had been a consultation RIS with the full policy proposal and then a decision RIS when the Bill was introduced, then that RIS would have spelled out what has changed as a result of consultation.

Another example where the working draft Bill seems lacking is in s67(3)(b) which refers to a "Coal Workers' Health Scheme". While the CWP Committee has recommended renaming the scheme to reflect a broader range of workers who might be exposed to respirable coal mine dust, currently there is no such scheme, it remains the Coal Mine Workers' Health Scheme. Again, one would

normally expect to see a consequential amendment to the *Coal Mining Safety and Health Regulation 2017* to change the name of the scheme as is proposed in the working draft Bill.

The overall impression is that the Bill has been tabled and referred for scrutiny to meet the CWP Committee's deadline of introducing legislation by August. If that is the case, and that deadline has been met by not undertaking a proper regulatory assessment process, then the CWP Committee risks wasting the time of the Parliament, the Infrastructure, Planning and Natural Resources Committee, and all the stakeholders who are providing input to this process.

Composition of the proposed Board

The QRC notes that Part 4 of the working draft Bill sets out provisions related to the creation of a fifteen-person Board, including the Commissioner who is the Chair. The role of the Board is to ensure the MSHA performs its functions in an appropriate, effective and efficient way. The QRC is generally supportive of the principle of increasing stakeholder involvement in achieving an effective and efficient mine safety and health compliance program. As set out earlier however, the QRC does not believe this requires the establishment of a separate MSHA.

The composition of the Board is designed to be balanced between representatives of operators of mines and associated businesses and representatives of workers within those businesses, with three independent members (including the Commissioner). The working draft Bill is silent on the qualifications required to be a Board member, apart from the qualifications for appointment as Commissioner.

Given the Board is generally representative rather than expertise based, this is probably appropriate for the six employer and six employee positions; however, it may be necessary to provide some guidance on the requirements for the two independent persons. While the requirements under clause 15(2) to be independent are generally reasonable, it would also seem logical that these people, who may hold the deciding voice on an issue, should have a sound understanding of resources safety and health issues. The proposed requirements to demonstrate independence may however act to prevent this, as five years of not working for industry or union in any state of Australia, including as a contractor, is an extensive period.

The functions assigned to the Parliamentary Committee

The involvement of a Parliamentary Committee in the administration of an Act would be an unusual administrative structure to implement on an ongoing basis. Such committees are established and get dissolved on the whim of the Government of the day, and if there is no such committee then the Minister, for example, would be unable to meet his statutory obligations to consult on the appointment of the Commissioner.

Committees and Panels

The QRC supports in principle the use of an expert medical advisory panel to provide advice to the regulator on a needs basis, but questions whether this requires an ongoing entity. The QRC does not support the creation of such a panel within the bounds of an MSHA.

While the QRC does not oppose the principle of establishing a standing committee on dust control, it questions the need for a standing committee to "research new dust control measures". Much of such research would need to be undertaken by independent researchers, however the working draft provisions suggest the Committee would itself be doing research, which is impractical. The coal mining industry already funds the Australian Coal Association Research Program (ACARP), which is a

highly successful mining research program that was established in 1992. It is 100% owned and funded by all Australian black coal producers through a five cents per tonne levy paid on saleable coal. ACARP's research covers a wide range of important areas including all aspects of the production and utilisation of black coal including health, safety and the environment. Through an annual round of funding ACARP supports those projects that enjoy industry wide support and involvement, utilising a Committee selection process.

it is also worth noting that the only two committees proposed are related to dust (Part 3, clause 11). This highlights QRC's previous observation that the proposed functions of the MSHA do not appropriately reflect the full scope of the requirements to manage resources safety and health outcomes.

Conclusion

The resources industry regards the safety and health of its workforce as a core value, and is cooperating with initiatives to address the risks associated with respirable mining dust.

The QRC does not support progression of the *Mine Safety and Health Authority Bill 2017* and believes that the proposals should be subjected to a full regulatory assessment process before they are further considered. Given the significant costs associated with the proposal to create a statutory Mine Safety and Health Authority the QRC believes that the Government's requirements for a Regulatory Impact Statement are triggered, and that such a RIS should achieve the following as a minimum:

- A full cost benefit analysis of the establishment of an MSHA, including its location in Mackay;
- An analysis of alternative policy proposals, including appropriate amendment within the current regulatory and administrative framework, intended to achieve the outcome of:
  - Implementing the recommendations of the Monash/UIC review of the Coal Mine Workers' Health Scheme;
  - Increasing the independence of the Commissioner for Mine Safety and Health;
  - Reducing the current bureaucratic control of the Mines Inspectorate by DNRM; and
  - Increasing the role of stakeholders in setting the safety and health priorities
- Examine the relative effectiveness of the proposed funding model based on a set percentage of royalties by:
  - Modelling the income it would have generated throughout the last resources cycle against the resourcing needs of the Mines Inspectorate during that period; and
  - Considering any alternative funding models identified by the review being undertaken by KPMG for DNRM against key performance criteria such as ease of administration, transparency and ability to reflect resourcing needs based on the requirement for safety and health compliance services.

The QRC further suggests that the CWP Committee should not bring forward any further proposed legislative amendments that have not been subjected to the type of rigorous regulatory assessment process that would apply to a Government agency. Where those proposals affect issues outside of the Committee's terms of reference those issues also need to be fully assessed by the appropriate government agency with the expertise to conduct the required analysis.

In the meantime, the QRC will continue to work with all other stakeholders within the current framework to ensure that the risk associated with coal and metalliferous mine dust is being managed to protect the health of workers within the resources industry.

Attachment A – Regulatory assessment process

The Queensland Government Guide to Better Regulation 2016 provides for exemption to assessments that are otherwise required to determine the impact of regulatory proposals. Such exemption is provided where analysis is unlikely to be beneficial because of one of the following three reasons:

- The regulatory changes are very minor;
- Sufficient analysis has already been undertaken;
- Swift action is required to protect property or prevent injury to persons.

A Preliminary Impact Assessment (PIA) is normally undertaken to determine the likely impacts of a regulatory proposal and whether those impacts will be adverse and significant. The PIA is normally lodged with the Office of Best Practice Regulation (OBPR) for assessment. If significant and adverse impacts are identified, further regulatory analysis is normally required in the form of a Consultation Regulatory Impact Statement (Consultation RIS). The Guideline further provides exemption from a RIS if there are exceptional circumstances such as the need to urgently implement government policy priorities or situations where public consultation on a proposal would not be appropriate and may compromise the public interest.