



7 September 2017

Committee Secretary  
Infrastructure, Planning and Natural Resources Committee  
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Dear Committee Secretary,

Thank you for the opportunity to make a submission to the Infrastructure, Planning and Natural Resources (IPNR) Committee's inquiry into the exposure draft of the *Mine Safety and Health Authority Bill 2017* (QLD), referred to from hereon in as "the Exposure Draft".

### **BHP's commitment to health and safety**

Ensuring the health and safety of all our people, across all our operations, is a core value of BHP. As a major employer and producer of metallurgical coal in Queensland, we understand the critical role we play in relation to health and safety in the coal mining industry. We share the Coal Workers' Pneumoconiosis (CWP) Select Committee and the Queensland Government's goal of addressing the health risks associated with coal dust exposure and ensuring adequate support for affected workers.

Our operations across Queensland include nine operating coal mines – seven owned by BHP Billiton Mitsubishi Alliance (BMA), with our 50% joint venture Partner, Mitsubishi Development Pty Ltd, and two owned by BHP Billiton Mitsui Coal (BMC), with our 20% joint venture partner Mitsui & Co (Australia) Ltd. BMA also owns the Hay Point Coal Terminal and BMA Rail; a rail haulage operation which operates on Aurizon's Goonyella network.

Since late 2015, when the first newly diagnosed cases of CWP emerged, BHP has been involved in a range of activities to address this issue. This has included providing support for our employees diagnosed with CWP; extensive and regular information updates to our workforce; reviewing and improving dust controls across our operations on a continuous basis; contributing to the improvement of the health surveillance scheme by assisting the *Review of Respiratory Component of the Coal Mine Workers' Health Scheme for the Queensland Department of Natural Resources and Mines* by Professor Malcolm Sim (July 2016, Monash University); and working with industry and government to improve the workers' compensation system for those affected by CWP. We are also in the process of a review of our internal Occupational Exposure Limit (OEL) for respirable coal dust.

We have co-operated extensively with the CWP Select Committee; making four appearances before this Committee, providing written submissions on the initial and extended terms of reference, and furnishing numerous documents to assist this Committee in its important work.

### **Submission on the Exposure Draft and the achievement of policy objectives**

We are concerned that the mechanisms proposed in the Exposure Draft, in its current form, fail to achieve the policy objectives of improving health and safety outcomes and addressing the historical issues identified specifically in relation to health surveillance. As such, we are unable to support the Exposure Draft in its current form.

We note that the Queensland Resources Council, of which we are a member, has raised certain concerns with the Exposure Draft in its submission. In addition, we ask the IPNR Committee to take note of the following concerns:

1. *Lack of demonstrated need for amendments to the current regulatory scheme*

As noted above, health and safety is a core value of BHP and we are supportive of policy steps that will improve the health and safety outcomes for people working in the mining industry. There is a lack of demonstrable need to establish the Mine Safety and Health Authority (MSHA), as proposed in section 5 of the Exposure Draft. Whilst the CWP Select Committee has identified certain historical concerns relating to the administration of health surveillance, such sweeping, wholesale change is not warranted.

We agree that there is ongoing work to be done in reviewing the existing regulatory system and health surveillance scheme. This work is already underway, with the implementation of the Sim/Monash Review recommendations. As noted above, our commitment to health and safety has seen us actively support all 18 recommendations made in the Sim/Monash Review. The Queensland Government is working with industry to implement all of the recommendations; with the first step being the new Coal Mining Safety and Health Regulations, which came into effect on 1 January 2017. Other recommendations in progress include new standards for spirometry and medical assessment, and registration of providers of respiratory health assessment components of the Coal Mine Worker Health Scheme.

Reform to the existing health surveillance system is best accomplished through focused ongoing collaboration between government and industry stakeholders, rather than through a drastic overhaul to the administration of mine health and safety in Queensland, as proposed by the Exposure Draft.

2. *Lack of overall improvement to safety and health outcomes*

We are supportive of policy steps that will improve health and safety outcomes of people working in the mining industry, but it is unclear whether the changes proposed in the Exposure Draft will improve overall mine health and safety outcomes. The issues and associated regulatory frameworks affecting the health and safety of people working in Queensland's mining industry are broad, multi-layered and complex.

Based on our reading of section 11 of the Exposure Draft, it appears that the greater part of the MSHA's proposed functions relate to dust management and dust-related health issues. The proposed role of the MSHA largely ignores the broader health and safety framework of the mining industry, and overlooks the intricacies associated with administering mine health and safety. It is therefore doubtful whether the creation of MSHA will improve overall health and safety outcomes.

Other jurisdictions, including the United States of America, which have adopted the approach outlined in the Exposure Draft have not necessarily seen better health and safety outcomes in their mining industries as a consequence of these administrative arrangements. We encourage the IPNR Committee to research the implementation and performance of bodies similar to the MSHA in other jurisdictions to determine whether there has been a demonstrable improvement in health and safety outcomes.

3. *Duplication of resources and confusion*

We are concerned that the creation of the MSHA, as proposed in the Exposure Draft, would create considerable administrative complexity and confusion, which would hinder, rather than help, the administration of mine health and safety in Queensland. Based on our reading of the Exposure Draft, it appears there would be a duplication of functions with the Department of Natural Resources and Mines if the Exposure Draft were passed in its current form. Without a clear delineation, these conflicting and overlapping functions could create a confusing, costly and possibly unworkable situation for the mine operators of Queensland as well as the Queensland Government. This, in turn, would distract from the core objective of industry and government in this area, which is ensuring the health and safety of people working in Queensland's mining industry.

The potential for confusion is compounded by the Exposure Draft's failure to address, or consider the interaction with, other relevant pieces of safety legislation, including the *Coal Mine Health and Safety Act 1999* (Qld), the *Workplace Health and Safety Act 2011* (Qld) and the *Rail Safety National Law 2017* (Qld).

Adding to the potential for confusion is the proposal in section 63 (1)(a) of the Exposure Draft to have a parliamentary committee monitor and review the performance of the MSHA. Under this proposal, oversight of the MSHA would change periodically, as the composition and lifespan of parliamentary committees is linked to the political cycle.

#### 4. *Poorly conceived funding system*

Part 9 of the Exposure Draft proposes to establish the Mine Safety and Health Fund (MSHF)<sup>1</sup> and proposes that payments can be made from the MSHF for expenses incurred by the MSHA in performing its functions.<sup>2</sup> Section 70 of the Exposure Draft proposes that the percentage of mining royalties paid to the MSHF each financial year would be prescribed by regulation. Section 63 (1)(c) also proposes that the percentage of mining royalties payable to the MSHF would be periodically reviewed by a parliamentary committee. However, sections 63 (1)(c) and 70 do not make any reference to administrative costs or health and safety criteria in determining this percentage. These should be key considerations when the funding of such an entity is determined. Furthermore, based on our reading, the Exposure Draft does not address the interaction of the MSHF with existing health and safety levies or mining royalty arrangements. Passing the Exposure Draft in its current form would therefore see the implementation of a poorly conceived funding system, which would add to the confusion outlined above.

#### 5. *Removal of requirement to give reasonable notice*

BHP is not supportive of 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. While we are supportive of policy steps that will improve the health and safety outcomes for people working in the mining industry, it is unclear how the requirements removal would further improve health and safety outcomes for Mine Workers. These worker representatives are not the regulator.

Industry experience of the current system has demonstrated there are already occasions where an ISHR has issued a 167 directive which the Chief Inspector has subsequently overturned. The cost of ceased operations can be material, even for periods of a few hours. Foregone production, impacts on logistics and re-commencement of operations are all factors which impact the business however, there is also a cost to the State in foregone royalties.

## Conclusion

In conclusion, health and safety is a core value of BHP and we continue to work closely with government and industry to address the issues associated with coal dust exposure. We are supportive of regulatory changes that increase the effectiveness of the health and safety framework as it relates to the mining industry. However, we are unable to support the Exposure Draft in its current form. Its central proposal, the creation of the MSHA, is not based on a demonstrable need and it fails to take into consideration the multilayered policy environment of mine health and safety. Furthermore, as outlined above, the funding proposals in the Exposure Draft are poorly conceived and overlook key considerations.

The implementation of the Exposure Draft in its current form would create a confusing and possibly unworkable situation for the Queensland Government as well as Queensland's mine operators. This, in turn, would distract from the crucial ongoing work by industry and government to address the health risks from coal dust which have been identified.

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<sup>1</sup> Section 69.

<sup>2</sup> Section 71 (a).

As an alternative to the proposals contained in the Exposure Draft, we invite further engagement and collaboration between government and industry stakeholders in relation to this important issue.

Regards,

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Asset President BMA

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Asset President BMC NSWEC