

Submission by the Board of Examiners
on the Mines Legislation (Resources Safety) Amendment Bill 2017

The Board of Examiners believe that a number of the matters raised in the Bill should be changed prior to the Bill being passed, some because of omission or mistakes and some because the current wording is not in the best interest of safety and health.

The Board of Examiners and its Members, except for the comments included below, accept and support the clauses which will have effect on the Board of Examiners, those being, Clause 16 and Clauses 26 to 34 inclusive, Clauses 36 to 41 inclusive and Clause 48 of the Amendment Bill.

Clause 27 Board of Examiners membership

Comment:

Recently the Department of Natural Resources and Mines has changed its position on the Chief Inspector of Mines and Quarries (CIOM) having to hold a First Class Certificate for Metalliferous Mines. This (the proposed s3A) may mean in the future that a person could be the CIOM and not hold a Certificate of Competency (CoC) issued by the Board of Examiners and yet be appointed to the Board of Examiners automatically.

Current CMSHA s186(4) which is to be deleted states:

- (4) At least 2, but no more than 3, members must be inspectors, of whom—
- (a) at least 1 must hold a first class certificate of competency for an underground coal mine; and
 - (b) at least 1 must hold a first class certificate of competency for an underground mine under the Mining and Quarrying Safety and Health Act 1999.

Comment:

The current s186(4) allows that in addition to the two Inspectors each holding a First Class Certificate (1 Coal and 1 Metalliferous), another Inspector may be on the Board of Examiners and may hold a different Certificate of Competency. The proposed new s186(4) would not allow this to occur. The Board of Examiners already has additional First Class Certificate holders who are required when an Inspectorate candidate sits an examination for a Certificate of Competency to minimise conflict of interest.

It is recommended that the Chief Inspectors should hold at a minimum a First Class Certificate of Competency for the type of mining they are Chief Inspector for. The Mount Mulligan Disaster on 19 September 1921 subsequent report recommended separate Inspectorate for Coal and Metalliferous mines.

Clause 30

30 Insertion of new s194A

After section 194—

insert—

194A Board of examiners may consider previous suspension or cancellation of certificate of competency or site senior executive notice

- (1) This section applies if—
- (a) a person has applied for the grant of a certificate of competency or site senior executive notice; and
 - (b) a certificate of competency or site senior executive notice previously held by the person was suspended or cancelled under this Act.

(2) The board of examiners may have regard to the previous suspension or cancellation in deciding the application.

(3) Subsection (2) does not limit the matters to which the board of examiners may have regard in deciding the application.

Comment:

This section does not consider if the person has a notice of Recognition under the Mutual Recognition Act. It is recommended it be amended to do so as a large number of people operating in Queensland mining industry now hold such recognition.

Clause 32 and Clause 33 Return of Certificates

Comment:

This should also reflect the Notice of Registration for Mutual Recognition.

Clause 34 Part 10A Notice by Chief Executive.

Comment:

The Acts Interpretation Act gives the power to a body who can make a decision to repeal or change that decision. Our understanding is that while it is not spelt out in the Coal Mining Safety and Health Act as it was in the previous mining legislation, advice received is that it is already covered in another Act.

How does this affect or is it affected by this proposed Part 10A?

Acts Interpretation Act s24AA below

24AA Power to make instrument or decision includes power to amend or repeal

If an Act authorises or requires the making of an instrument or decision—

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

Clause 47 Insertion of new pt 20, div 7

Part 20—

309 Ventilation officers holding office when transitional period ends

(1) This section applies to a person who, when the transitional period ends, is appointed as the ventilation officer, or acting ventilation officer, for an underground mine.

(2) The person's appointment ends immediately after the transitional period ends unless—

(a) the person holds a ventilation officer's certificate of competency; or

(b) the chief inspector extends the person's appointment for a further period of not more than 3 years.

(3) The chief inspector may extend the person's appointment under subsection (2)(b) only if satisfied—

(a) the person has started to take the steps necessary to obtain the certificate of competency; and

(b) for an extension of more than 2 years—there are exceptional circumstances.

(4) The chief inspector may impose conditions on the extension of the person's appointment.

(5) If the person does not comply with a condition of the extension, the person's appointment ends.

(6) This section applies despite section 61.

310 Existing site senior executive notices

- (1) This section applies to a notice issued by the board of examiners to a person relating to the person's competency to perform the duties of a site senior executive for a coal mine, if the notice was in force immediately before the commencement.
- (2) The notice is taken to be a site senior executive notice.

Comment:

Three years is sufficient for any person already working as a Ventilation officer to be able to attain the Competency required for the Ventilation officer position and meet the requirements of the Board of Examiners to gain the Certificate of Competency.

For people who wish to gain the Certificate and who have not yet started, the timeframe would also be sufficient if they have current mining experience.

Members of the Board of Examiners oppose the clauses in s309(2) (b) and 309(4)(5)(6).

S310 above – it is believed that the transition time should apply to SSEs and that they should meet the requirements of the new s26 of the CMSHA and the Board of Examiners.

Other comments

The Board of Examiners would also like the following taken into consideration:

Statutory Certificates of Competency for Open Cut Coal Managers, Electrical Engineering Managers and Second Class Coal (Underground) to be mentioned in the legislation.

The Board of Examiners also expressed the view that there needs to be a proper process for legislation development and review.

The Board of Examiners would like it noted that, as stakeholders, they were not consulted as part of the amendment process.