

Mines Legislation (Resources Safety) Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the *Mines Legislation (Resources Safety) Amendment Bill 2017* (the Bill).

Policy objectives and the reasons for them

The safety and health of workers in Queensland's mining sector is regulated under the *Coal Mining Safety and Health Act 1999* (CMSHA) and the *Mining and Quarrying Safety and Health Act 1999* (MQSHA). These Acts establish mining sector specific safety and health obligations which are distinct from general workplace obligations under the *Work Health and Safety Act 2011* (WHS Act).

The re-identification of coal workers' pneumoconiosis (CWP) highlights the need for continuous improvement of regulatory frameworks so that every worker goes home safely. The Bill will deliver initiatives to ensure additional safety and health measures are in place to protect Queensland's miners and includes minor amendments to support the government's response to the Monash University review of the respiratory component of the coal mine workers' health scheme.

The Bill addresses 15 matters identified for immediate improvement in the resources safety and health regulatory framework that will increase worker safety and health. The Bill provides for greater transparency and accountability; improvements to safety and health management systems; and stronger enforcement and compliance powers by implementing amendments to the CMSHA and MQSHA in relation to:

- ventilation officer competencies;
- inspector powers including inspector workplace entry;
- manufacturer, supplier, designer and importer notification requirements;
- contractor and service provider management;
- advisory committees and Board of Examiners membership;
- safety and health management system (SHMS) requirements;
- register to be kept by board of examiners;
- health surveillance;
- notification of diseases;
- release of information;
- penalties;
- officer obligations;
- continuing professional development;
- suspension or cancellation of certificates of competency and site senior executive (SSE) notices; and
- civil penalties.

Ventilation officer competencies

To maintain high safety standards, persons appointed to ventilation officer positions must be sufficiently skilled. Compliance activities have highlighted ongoing deficiencies in the competency and training of ventilation officers.

The proposed amendment will ensure there are people with sufficient experience, expertise, status and understanding of statutory obligations working at the operational level as ventilation officers, in the complex and hazardous mining process. It will improve labour mobility for ventilation officers and increase consistency in relation to competency requirements for ventilation officers across the major mining states of Queensland, New South Wales and Western Australia.

Inspector powers - including inspector workplace entry

The objective of proposed changes is to allow for more appropriate workplace entry powers (i.e. to include off mine site workplaces) by adopting a similar approach to that used under the WHS Act for entry to places. This will provide certainty regarding powers to enter and conduct inspections, investigations and audit compliance at all workplaces that have the potential to affect safety and health at mines. This will enable an inspector to enter a place that is, or an inspector reasonably suspects is, a workplace. This will provide mines inspectors with broad rights to enter a workplace, similar to general workplace inspectors under the WHS Act. The scope of entry for mines inspectors will continue to be limited by the objects of the Acts and the functions of the mines inspectorate (i.e. relating to safety and health matters concerning mines and as a result of mining operations).

Manufacturer, supplier, designer and importer notification requirements

This amendment will impose an obligation on designers, manufacturers, importers and suppliers to notify both the mines inspectorate and mine operators of any identified hazards or defects with supplied equipment and substances that they become aware of.

Following an inquest, the Queensland Coroner recommended that the CMSHA be amended to require manufacturers and suppliers to inform the regulator and their customers, in the event they become aware of a hazardous aspect or defect in the equipment supplied to a coal mine. To build on the coroner's recommendation, and ensure consistency across Queensland's mining safety and health legislation, it is proposed to expand the requirements under the CMSHA and MQSHA to include:

- (a) designers, manufacturers, importers and suppliers;
- (b) plant and substances supplied to a mining operation; and
- (c) hazardous incidents associated with the equipment and substances supplied.

Contractor and service provider management

Contractors and service providers may have specialist expertise for their particular work at a mine, but may not understand or be aware of the essential safety disciplines and safety critical processes required at a mine under the mine's SHMS. Equally, an SSE may not have an adequate understanding of the safety and health issues associated with the particular specialist work being undertaken by contractors or service providers. To ensure an acceptable level of risk, contractors and service

providers will be required to provide a copy of their safety and health management plan to the SSE for consideration and integration (as appropriate) into the mine's single SHMS. As a result, all contractors, service providers and workers at a mine site will be aware of risks and controls associated with specialised work of contractors and service providers as well as the broader requirements under the overarching, single integrated SHMS developed and implemented by the mine's SSE.

Advisory committees and Board of Examiners' membership

With the appointment of an independent Commissioner for Mine Safety and Health in 2016, there is no longer an equal number of departmental representatives compared with industry and union representatives on the advisory committees (Coal Mining Safety and Health Advisory Committee (CMSHAC) and the Mining Safety and Health Advisory Committee (MSHAC)). The objective is to increase the number of departmental (mines inspectorate) members of each committee from two to three members, which will bring the total number of members on each committee to 10 persons (including the Commissioner).

A further matter in relation to external appointments to advisory committees relates to section 80(4) of the CMSHA and section 71(5) of the MQSHA. These sections enables the Minister to appoint a person who represents mine operators or workers only if the person is experienced in "coal mining operations" or "mining operations". These terms have specific meanings under the CMSHA and MQSHA, and at times proposed representatives for appointment will not be able to meet the experiential requirement.

To address this issue, the Minister would have the discretionary power to appoint a person even if the person does not have experience in mining operations.

With regard to the Board of Examiners, two of the inspector appointments to the Board of Examiners would also be by position (i.e. the chief inspector of coal mines and the chief inspector of mines) rather than by name of the individuals appointed to those positions.

Safety and health management system (SHMS) requirements

It is proposed that SHMS requirements be introduced for opal and gemstone mines, to enable operators to achieve an acceptable level of risk.

Register to be kept by board of examiners

It is proposed that amendments be made to the CMSHA and MQSHA to allow the board of examiners to keep a register of certificates of competency, SSE notices and notices of registration given by the board under the *Mutual Recognition Act 1992 (Cth)*. The register will include the name and contact details of the holder, details of the certificate or notice and the status of the certificate or notice. Amendments will be made to the CMSHA and MQSHA to provide that the information contained in the register, other than the contact details of the holder, may be made available. This will enable persons, such as mine operators or SSEs, to determine if a person holds a valid certificate or notice.

Health surveillance

The objects of the CMSHA and MQSHA are broad in their aim to protect the safety and health of persons at mines and as a result of mining operations, with coverage extending to requiring the risk of injury and illness to be at an acceptable level. How the objects of the Acts are to be achieved are detailed in section 7 of both Acts.

Section 7(k) of the CMSHA provides that the objectives of the Act are to be achieved by “providing for the health assessment of coal mine workers”. However, the MQSHA is silent in this respect. Concerns from silicosis are well known and silicosis is one of the diseases prescribed under the MQSHR which is required to be reported. The amendment to the objects of the MQSHA addresses this discrepancy.

In addition the object of the CMSHA and MQSHA should be aligned to cover those persons to which health related requirements already apply under the CMSHA and CMSHR – namely persons employed or to be employed at a coal mine; or persons who have permanently retired from working as a coal mine worker (i.e. prospective, current and retired coal mine workers).

Further, while the term ‘health assessment’ implies the long-term surveillance (i.e. monitoring) of coal mine workers health; the objectives section is silent on the role of health surveillance in meeting the objects of the Act. Given the significant role of health surveillance achieved through the Coal Mine Workers’ Health Scheme (established under the CMSHR); health surveillance should also be acknowledged as a way the objects of the Act are to be achieved.

While a similar health assessment regime currently does not exist under the MQHSA, a comparable amendment would future-proof the MQSHA in terms of emerging health issues. Therefore, health assessment and health surveillance (for prospective, current and retired industry workers) should both be included in how the objects of the MQSHA are to be achieved.

Notification of diseases

The Mining Safety and Health Legislation (Coal Workers’ Pneumoconiosis and Other Matters) Amendment Regulation 2016 commenced on 1 January 2017 in response to the re-identification of CWP in the Queensland coal industry. The amendment regulation prescribes certain occupational diseases under the CMSHR and the MQSHR, which requires a SSE to notify the mines inspectorate when they become aware of an occurrence of a prescribed disease.

The existing disease notification requirements only apply to a SSEs. However, a SSE will not always be aware of a worker being diagnosed with a prescribed disease. For example, a coal mine worker’s health assessment results are provided to the worker’s employer but will not always contain a diagnosis of prescribed disease. The Bill allows for prescription of other persons, for example medical practitioners, as persons who must notify cases of prescribed disease.

While a similar health assessment regime currently does not exist under the MQHSA, a similar amendment would future-proof the MQSHA in terms of emerging health issues. Therefore the notification requirements under both the CMSHA and MQSHA

are to be extended to include other persons as prescribed under the respective regulations.

Release of information

The timely release of safety information by regulators (e.g. safety alerts about incidents) enables industry to implement key learnings in a timely manner. The aim is that industry will learn from the information and be encouraged to improve performance in relation to safety and health management and prevention strategies. Amendments to the CMSHA and MQSHA will strengthen provisions enabling the release of information and clarify the type of information that may be released.

Penalties

Maximum penalties under the CMSHA and MQSHA have not been increased since 2007 and are significantly lower than the penalties prescribed in the WHS Act. The WHS Act framework also provides for officers as a separate category being subject to higher maximum financial penalties compared to other individuals.

Greater consistency can be achieved by adopting the maximum penalties under the WHS Act and by adopting subcategories for officers in addition to other individuals, where relevant. It is important to note that the meaning of a “penalty unit” under section 5 of the *Penalties and Sentences Act 1992* sets the value of a penalty unit under the WHS Act, set at \$100 (for national consistency). The value of a penalty unit under the CMSHA and MQSHA is currently \$126.15 (as at 1 July 2017). This is generally adjusted by CPI, yearly.

Officer obligations

There is a need to review the current liability imposed on executive officers for corporate offending under the CMSHA and MQSHA. This is in light of the approach to executive officer liability under Queensland’s *Work Health and Safety Act 2011*.

An officer must exercise an appropriate level of due diligence, commensurate with the position and influence of the officer for example a senior decision maker within a corporation.

In applying mining safety and health obligations on “officers” under the CMSHA and MQSHA it needs to be made clear that these obligations are specifically placed on the “officer” and do not apply to a person appointed as, or whose position reports directly or indirectly to, the SSE for a mine.

Continuing professional development

The Board of Examiners issues certificates of competency for life, which may compromise the currency of the necessary competency. To maintain the certificate ongoing professional development is necessary to ensure the holder continues to maintain an appropriate level of competency.

Amendments are proposed to clarify that the functions of the Board of Examiners are not limited to deciding only the competencies necessary to hold a certificate of competency, but also extend to deciding matters pertaining to the continuing

professional development of certificate of competency holders (e.g. competencies necessary to hold a practising certificate).

Requirements for practising certificates will be introduced under the respective regulations at a future date.

Chief executive power to suspend or cancel certificates of competency or SSE notices

Persons in safety critical roles at mine sites are required under the CMSHA and the MQSHA to hold a certificate of competency issued by the Board of Examiners or obtain units of competency for the role of SSE.

If a person in a safety critical role fails to comply with a safety and health obligation under the CMSHA or MQSHA, this can pose a risk to the safety and health of workers to whom they owe a responsibility. It is important that only those persons who are competent and appropriate hold certificates of competency and undertake safety critical statutory roles on mine sites.

The current provisions of the CMSHA and MQSHA only expressly allow cancellation or suspension of certificates of competency by a court; or by the Board of Examiners where a certificate is obtained through fraud. The Board of Examiners power will extend to SSE notices.

It is proposed that the chief executive will have the ability to suspend or cancel a certificate of competency or notice where the holder has contravened a safety and health obligation under the CMSHA and MQSHA; or has committed an offence against a mining safety legislation in Queensland or another state or territory. A certificate of competency may also be suspended or cancelled if the holder has had a certificate of competency suspended or cancelled in another state or territory.

A person will be afforded natural justice and a right to respond before a decision to suspend or cancel is made. The holder whose certificate or notice is suspended or cancelled would have the opportunity to seek external review by the Industrial Magistrates Court. The suspension or cancellation of the certificate or notice may be a matter that could be considered in deciding whether to grant a certificate to the holder in the future.

Civil penalties

Queensland mining safety and health legislation imposes obligations and requirements on persons, including the requirement to protect the safety and health of persons at mines or affected by mining operations. Breaches of these obligations have the potential to impact the safety and health of workers.

Civil penalties are necessary to provide for action to be taken to address non-compliance. Civil penalties may be applied where a breach requires direct redress and is sufficiently significant to warrant a substantial financial penalty. This could include a failure to fulfil an obligation or requirement that has the potential to significantly impact the safety and health of persons at the mine.

Achievement of policy objectives

Ventilation officer competencies

Section 61 of the CMSHA specifies the requirements for the appointment of a ventilation officer (including appointment conditions linked to competencies). The role of ventilation officer is not addressed under the MQSHA and as such no competencies are applied.

For other safety critical positions, this is addressed by requiring the person appointed to such a role to hold a certificate of competency granted by the Board of Examiners, which includes an assessment component undertaken by the Board to ensure a person is competent. It is proposed to apply this approach under the CMSHA to the statutory position of ventilation officer for an underground coal mine.

As underground mining in a non-coal context does not have the same hazards relating to explosive atmospheres; a lower level approach (similar to that currently provided for under section 61 of the CMSHA) is proposed for the MQSHA. However, as the non-coal underground sector has a number of small scale mining operations with relatively few workers and/or lower associated risks, it is not appropriate to impose a uniform regime on the entire sector. Instead, a tiered approach based on the number of underground workers is proposed. A safeguard in the form of prescription under regulation of mines to which the new requirement is to apply regardless of the number of workers, is also provided for.

Inspector powers - including inspector workplace entry

Existing workplace entry powers under the CMSHA and MQSHA are reasonably broad, applying (with some limitations) to mines and quarries as well as to workplaces (as defined under the WHS Act) and public places. Specifically section 133(1) of the CMSHA section 133(1)(e) and section 130(1)(e) of the MQSHA apply to workplaces under the control of a person who has an obligation under the CMSHA and MQSHA and is open for the carrying on of business or otherwise open for entry.

The intention of the current obligation and entry provisions is to provide a power to enter workplaces, including those workplaces off the mine site, without permission or requiring a warrant. 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. An example is an electrical overhaul workshop conducting maintenance on explosion protected electrical equipment to be reinstalled in an underground coal mine following maintenance.

Manufacturer, supplier, designer and importer notification requirements

If a designer, manufacturer, importer or supplier becomes aware of a hazard or defect associated with plant that may create an unacceptable level of risk to users of the plant, they must inform the chief inspector of:

- the nature of the hazard or defect;
- its significance;
- the name of each operator, contractor or service provider the designer, manufacturer, importer or supplier has supplied the plant to; and
- any modifications or controls of which the designer, manufacturer, importer or supplier is aware that have been developed to eliminate or correct the hazard or defect or manage the risk.

If a manufacturer, importer or supplier of a substance becomes aware of a hazard or defect associated with a substance that may create an unacceptable level of risk to users of the substance, they must inform the chief inspector of:

- the nature of the hazard or defect;
- its significance;
- the name of each operator, contractor or service provider the designer, manufacturer, importer or supplier has supplied the substance to; and
- any modifications or controls of which the manufacturer, importer or supplier is aware that have been developed to eliminate or correct the hazard or defect or manage the risk.

Contractor and service provider management

This amendment targets improvement in contractor and service provider safety and health at mine sites by requiring 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.

Contractors and service providers have an obligation to comply with the mine's SHMS. The existing requirements are considered insufficient and have not consistently driven effective collaboration between the SSE and contractors to determine any necessary changes to contractor procedures to ensure compliance with the mine's single SHMS. This is particularly important where a specialist contractor is engaged and the specialist contractor's safety plan, systems or procedures are inconsistent with the safety and health management system for the mine; or when a contractor needs to understand and follow safety critical procedures at a mine.

On occasion, there may be instances where a contractor or a service provider is engaged to undertake a specialist task that is not normally undertaken on site (for example belt vulcanisation) and the mine's safety and health management system may not already cater for that task. In this event, the contractor or service provider will present their operating safety system documentation and standard operating procedures to the SSE who will review it to ensure there is no conflict with the existing single safety and health management system in force at the mine site.

If there is a conflict, the contractor's safety and health management plans and procedures must be altered to meet the site safety requirements and the contractor's employees trained and assessed in the alternate methods. If the contractor believes they have a more effective safety and health management plans/procedures for the particular task, it can be discussed with the SSE. If the SSE agrees that the contractor does have a more effective system, the SSE in accordance with the Regulations should have a cross section of the workforce review and develop the system so that the mine's safety and health management system incorporates these elements. The implementation of those new systems should then include the retraining and assessment of all relevant personnel.

Advisory committees and Board of Examiners membership

The coal mining safety and health advisory committee and the mining safety and health advisory committee each consist of nine members, one of whom is the chairperson. The chairperson of each committee is the Commissioner for Mine Safety and Health. Other than the Commissioner each committee has three members representing industry workers, three representing mine operators and two members from the mines inspectorate. Historically the person appointed to the Commissioner for Mine Safety and Health role was also a departmental employee, meaning equal tripartite representation across each committee.

In relation to the appointment processes, currently all persons appointed as members of statutory bodies under the CMSHA and MQSHA are appointed as individuals, rather than by position. The current approach is administratively burdensome in relation to departmental employees in the event of resignations or extended periods of absence and is inconsistent with recommendations of the "Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities" that appointments be by position where possible.

This issue can be overcome if the CMSHA and MQSHA are amended to provide that departmental appointments be to specific positions where possible. Two of the inspector appointments to the Board of Examiners can be by position (i.e. the chief inspector of coal mines and the chief inspector of mines) rather than by name of the individuals appointed to those positions.

This practice is permissible under section 24A of the *Acts Interpretation Act 1954*, which provides that appointments may be made by the title of an office and that the appointee is taken to be the person occupying or acting in the office. The appointment of public service office holder positions, as opposed to individuals by name, removes the requirement for the appointee to tender a resignation upon ceasing employment with the public service or leaving the relevant position.

Further, this provision aims to provide the Minister discretionary power to appoint a person from a panel even if the person does not have 'coal mining operations' experience (which has a defined meaning under the CMSHA). While this experience is highly regarded, at times proposed representatives for appointment will not be able to meet the experiential requirement. This has arisen for worker representatives proposed for appointment to the mining safety and health advisory committee under section 71 of the MQSHA; however, the proposed amendments need to be consistent across both Acts.

Safety and health management system (SHMS) requirements

Section 7 of the MQSHA specifically identifies the provision of a SHMS at mines to manage risk, as achieving an objective of the Act. Sections 38 and 39 of the MQSHA outline the obligations of an operator and SSE for a mine, which include an obligation to develop and implement a single SHMS for all persons at the mine.

Sections 55 and 56 detail what should be included in the SHMS to achieve an acceptable level of risk and the process for reviewing the SHMS.

Under the MQSHR, the SHMS must include:

- a) procedures for reporting accidents and high potential incidents (section 14);
- b) procedures for documenting the techniques that must be used for investigating accidents; (section 15)
- c) an emergency response plan; (section 35)
- d) controlling risk arising out of personal fatigue; (section 89); and
- e) isolating, locking-out and tagging plant (section 107).

Opal and gem mines with fewer than 11 workers (small mines) are currently exempt from the requirement to have a safety and health management system. To reduce the high percentage of fatalities and to improve the safety and health in small mines, the Bill removes the current exemption provided in the MQSHA requiring all mines to have a safety and health management system regardless of their size.

Register to be kept by Board of Examiners

The Board of Examiners is established under Part 10 of the CMSHA and has the functions described in Part 10 of the CMSHA and Part 10 of the MQSHA.

There are also Board of Examiners processes for the mutual recognition of equivalent Certificates of Competency issued by other Australian States under the *Mutual Recognition Act 1992 (Cth)* and by New Zealand under the *Trans-Tasman Mutual Recognition Act 1997 (Cth)* (letters of mutual recognition). In addition, the Board of Examiners also administers the statutory legislation examination for Notices for SSEs of coal mines (SSE notices).

Currently, any agency, mine operator or other person seeking to confirm that a person is the holder of a valid certificate or notice requires either the consent of the holder or alternatively may request access to the information under the *Right to Information Act 2009*.

The current approach is not only creating an unnecessary administrative burden, particularly for employers seeking to confirm the qualifications of candidates for safety critical roles, it also detracts from promoting transparency in the mining industry.

This amendment will provide for the Board of Examiners to keep a register of holders of certificates of competency, SSE notices and notices of registration given by the board under a mutual recognition Act. The information included in the register will be specified including the holder's name, details of the certificate of competency or notice and the status of the certificate of competency of notice.

Further, 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.

Health surveillance

This provision amends how the objects of the Act are to be achieved by amending section 7(k) of the CMSHA to also provide for long-term health surveillance of coal mine workers, in addition to health assessment. The amended paragraph (k) also affirms that health surveillance of current and former miners is within the objectives of the CMSHA. This is consistent with the purposes of the Coal Mine Workers' Health Scheme (established under the CMSHR). Similar amendments are proposed to section 7(j) of the MQSHA.

Notification of diseases

The Mining Safety and Health Legislation (Coal Workers' Pneumoconiosis and Other Matters) Amendment Regulation 2016 commenced on 1 January 2017 in response, to the recent re-identification of CWP in the Queensland coal industry. The amendment regulation prescribed certain occupational diseases in the CMSHR and the MQSHR, which requires a SSE to notify the mines inspectorate when they become aware of an occurrence of a prescribed disease. The notification is required under existing notification provisions under the CMSHA and MQSHA.

The existing disease notification requirements only apply to a SSEs. However, an SSE will not always be aware of a worker being diagnosed with a prescribed disease. For example, a coal mine worker's health assessment results are provided to the worker's employer but will not always contain a diagnosis of prescribed disease. The Bill allows for prescription of other persons, for example medical practitioners, as persons who must notify cases of prescribed disease.

The amended provision will include a list of 'reportable diseases' that must be reported to the Chief Inspector should they become aware of it. A maximum penalty of 40 units will be prescribed for non-compliance.

Release of information

The release of safety information by regulators (e.g. safety alerts about incidents) enables industry to implement key learnings in a timely manner. The aim is that industry will learn from the information and be encouraged to improve in relation to safety and health management and prevention strategies.

Queensland already has some statutory authorisation under sections 275AC – 275A of the CMSHA and sections 254C and 255 of the MQSHA for releasing information about mine safety and health incidents and other matters. Amendments to the CMSHA and MQSHA will strengthen provisions enabling the release of information and clarify the type of information that may be released.

Penalties

This provision replaces section 34 to increase the maximum financial penalties to be more closely aligned with the maximum financial penalties in the *Work Health and Safety Act 2011* (WHS Act). The replacement section has also been expanded to specify maximum penalties for an officer of a corporation. This aligns with amendments made to section 33.

While aligning maximum penalty units will provide a level of equity, it is acknowledged that this will result in higher maximum financial penalties under the amended CMSHA and MQSHA due to the higher value of a penalty unit under these Acts. It is reasoned however that while this introduces a discrepancy; the WHS Act maximum penalties have not been adjusted since 2011 and when this occurs nationally, it is expected that no further changes to the CMSHA and MQSHA will be required as the maximum financial penalties have been increasing incrementally over time.

Officer obligations

There are currently differences between “executive officer” provisions under the CMSHA and MQSHA compared to “officer” duties under the WHS Act. The current definition of “executive officer” in the CMSHA and MQSHA covers directors and those concerned with or taking part in the corporation’s management whatever the person’s position is called. The WHS Act definition of “officer” in relation to a corporation is the meaning of “officer” under the *Corporations Act 2001* other than a partner in a partnership. Other parts of the WHS Act “officer” definition covering government and public authorities are not relevant to the mines context.

In the current CMSHA and MQSHA, executive officers are liable if their corporation has committed an offence. If the mines inspectorate also prosecutes executive officers as a result of an offence committed by the corporation, executive officers have the onus of proving in their defence that they were reasonably diligent in ensuring the corporation complied with the legislation or that they were not in a position to influence the corporation in relation to the offence.

Further, the safety obligations of mining corporation executives in the CMSHA and MQSHA are outdated and not consistent with Queensland and national occupational health and safety reforms. In particular, there are no proactive obligations on directors and officers at board level to monitor, audit and review safety and health performance. Currently in the CMSHA and MQSHA this responsibility rests primarily with the SSE.

It is proposed to adopt the approach taken in the WHS Act, which provides for a duty whereby an officer of a corporation must be proactive in taking steps to ensure compliance rather than accountability only applying after contravention by the corporation. This applies whether or not there has been an incident and irrespective of whether the corporation is prosecuted.

These provisions reflect a deliberate policy shift away from applying ‘accessorial’ or ‘attributed’ liability to officers, to a requirement for officers to be proactive. This means that officers owe a continuous duty to ensure compliance with duties and obligations under the legislation.

Continuing professional development

Certificates of competency issued under the CMSHA and MQSHA do not expire, nor do they require any form of continuing professional development. Given the safety critical nature of roles requiring certificates of competency, maintaining currency of skills and knowledge should be a primary consideration.

The current stated functions of the Board of Examiners include ensuring competencies are consistent with the competencies required by other States. New South Wales has recently included provisions in their mining regulations to introduce practising certificates based on continuing professional development by holders of certificates of competency (i.e. statutory position holders). A similar approach for continuing professional development has also been introduced in New Zealand.

The functions of the NSW Board are broadly stated which facilitates both the certificates of competency and the practising certificate schemes. In contrast, the functions of the Queensland Board of Examiners are prescriptive and it is unclear if these functions would extend to also cover requirements for practising certificates.

The provisions will clarify and confirm that the functions of the Queensland Board are not limited to deciding only the competencies necessary to hold a certificate of competency, but also extend to deciding matters pertaining to continuing professional development of certificate of competency holders (e.g. competencies necessary to hold a practising certificate). This will allow for continuing professional development requirements to be introduced by regulation. Continuing professional development requirements may also be extended to SSE notice holders.

Chief executive power to suspend or cancel certificates of competency or SSE notices

Persons in safety critical roles at mine sites are required under the CMSHA and the MQSHA to hold a certificate of competency, issued by the Board of Examiners or obtain units of competency for the role of SSE.

If a person in a safety critical role fails to comply with a safety and health obligations under the CMSHA and MQSHA it can pose a risk to the safety and health of workers to whom they owe a responsibility.

The current provisions of the CMSHA and the MQSHA only expressly allow cancellation or suspension of certificates of competency by a court; or by the Board of Examiners where a certificate is obtained through fraud. The Board of Examiners power will extend to SSE notices.

It is important that only those persons who are competent and appropriate hold certificates of competency and undertake safety critical statutory roles on mine sites.

This provision enables the chief executive to suspend or cancel a certificate of competency or SSE notice where the holder has contravened a safety and health obligation under the CMSHA and the MQSHA; or has committed an offence against a mining safety legislation in Queensland or another state or territory. The chief executive may also suspend or cancel a certificate of competency where the holder

has had a certificate of competency suspended or cancelled in another state or territory.

A person will be afforded natural justice and a right to respond before a decision to suspend or cancel is made. The holder whose certificate or notice is suspended or cancelled would have the opportunity to seek external review by the Industrial Magistrates Court. The suspension or cancellation of the certificate or notice may be a matter that could be considered in deciding whether to grant a certificate to the holder in the future.

Civil penalties

The CMSHA and MQSHA impose obligations and requirements to protect the safety and health of persons at mines and persons who may be affected by mining operations; and to ensure the risk of injury or illness to persons is at an acceptable level. Many hazards exist on mine sites which may pose significant risks to workers if not addressed.

Civil penalties are necessary to provide for action to be taken to address non-compliance. Civil penalties may be applied where a breach requires direct redress and is sufficiently significant to warrant a significant financial penalty. This could include a failure to fulfil an obligation or requirement that has the potential to significantly impact the safety and health of persons at the mine. Imposition of a civil penalty does not preclude prosecution for an offence relating to the same conduct. Where a corporation is prosecuted criminally in respect of the same conduct, a civil penalty may not be imposed unless the proceeding ends without the corporation being convicted or found guilty.

The provision will address this issue by enabling the chief executive to impose civil penalties against corporations who are mine operators or contractor who fail to comply with certain obligations or requirements under the CMSHA and the MQSHA.

The provision prescribes three categories of civil offences (categories 1, 2 or 3) based on the safety and health risk to persons at the mine. The civil penalties will apply: 1,000 penalty units for category 1, 1,750 penalty units for category 2 and 500 penalty units for category 3. This is based on the value of \$126.15 per penalty unit (effective as at 1 July 2017).

The provision also provides that corporations who are mine operators or contractors would be liable where a representative such as an officer, employee or agent fails to comply with certain obligations or requirements under the CMSHA or MQSHA.

The provision requires a corporation liable for a civil penalty to be afforded natural justice and a right to respond prior a decision to impose a civil penalty being made. A corporation who has a civil penalty imposed on them would have a right to appeal to the Industrial Magistrates Court.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than through legislative amendment.

Estimated cost for government implementation

There will be no significant government implementation costs associated with the amendments made by the Bill.

Implementation will be managed within the existing budget of the Department of Natural Resources and Mines.

Consistency with fundamental legislative principles

The *Legislative Standards Act 1992* (LSA) requires an assessment of the consistency of the Bill with fundamental legislative principles (FLPs) and, if there are inconsistencies with FLPs, the reasons for the inconsistency. The Bill is generally consistent with FLPs, however, where it is possible that certain provisions may be considered inconsistent with FLPs, justifications for sufficient regard to the FLPs, or for the inconsistencies are provided.

Some of the amendments provide for greater consistency with general work health and safety laws (e.g. penalties, officer obligations), and NSW mining safety laws to achieve a greater degree of regulatory harmonisation with the other large mining states and workers generally.

Responses against specific FLPs are provided here.

Suspension and cancellation of certificates of competency and site senior executive notices

Clause 34 of the Bill inserts a new Part 10A into the CMSHA, which provides for the suspension and cancellation of certificates of competency and site senior executive notices by the Chief Executive. Clause 77 of the Bill similarly amends the MQSHA by inserting a new Part 10A.

The decision to suspend or cancel these certificates and notices is dependent on the exercise of administrative power by the chief executive (see the Legislative Standards Act s 4(3)(a)). Accordingly, these provisions arguably impact on the rights and liberties of the individuals who hold these certificates and notices.

The exercise of the administrative power to suspend or cancel a person's certificate of competency can only occur in circumstances where:

- the person has contravened a safety and health obligation;
- the person has committed an offence against a law of Queensland or another State (a corresponding law) relating to mining safety; or
- a certificate, equivalent to a certificate of competency, that was issued to the person under a corresponding law of another State has been suspended or cancelled.

The exercise of the administrative power to suspend or cancel a person's site senior executive notice can only occur in circumstances where:

- the person has contravened a safety and health obligation; or
- the person has committed an offence against a corresponding law.

Before taking proposed action to suspend or cancel a certificate of competency or a site senior executive notice, the chief executive must first give a notice to the person stating each of the following matters—

- the proposed action;
- the ground for the proposed action;
- an outline of the facts and circumstances forming the basis for the ground;
- if the proposed action is to suspend the certificate of competency or site senior executive notice—the proposed period of the suspension;
- that the person may make a written submission to the chief executive, within a stated period of at least 28 days, to show why the proposed action should not be taken.

A decision to take the proposed action to suspend or cancel a certificate of competency or a site senior executive notice can only occur once the chief executive has considered any written submission made by the person and the chief executive still considers that a ground exists to take the proposed action. The chief executive must then give the person a notice stating:

- the chief executive's decision;
- the reasons for the decision;
- that the person may appeal against the decision within 28 days;
- how the person may appeal;
- that the person may apply for a stay of the decision if the person appeals against it.

Appeals against the chief executive's decision to suspend or cancel a certificate of competency or a site senior executive notice are to be heard by the Industrial Magistrate's Court.

A holder of a certificate of competency or a site senior executive notice have significant responsibilities for the safety and health of mine workers. The regulator has an obligation to ensure that risks to safety and health on a mine site are appropriately managed by competent persons who operate in accordance with their lawful obligations.

These amendments to suspend or cancel a certificate of competency or a site senior executive notice are justified given both:

- the risks to worker safety and health for allowing a person to continue to perform statutory functions when they have contravened a safety and health obligation; and
- the natural justice that is afforded to the person who holds the certificate of competency or a site senior executive notice.

Release of information

The CMSHA and MQSHA have provisions about the making of public statements by the Minister, chief executive, Commissioner and chief inspector about a range of matters.

The CMSHA and MQSHA include a miscellaneous provision providing protection from liability for an official for any acts done honestly and without negligence under the Acts. This is in accordance with the general Queensland standard to confer immunity only where the person acts without negligence and any civil liability instead attaches to the State.

This goes against the general principle that all persons are equal before the law and that immunity should not be conferred. However, in these cases there is justification for immunity, as it is necessary for the administration of the Acts, including the release of information about incidents in order for officials to be able to carry out their statutory safety and health functions and not be reluctant to act through concerns about potential personal legal liability.

The amendments in Clause 45 and Clause 88 will remove all doubt about the release in good faith of incident information including through safety alerts. The amendments are similar to the provision covering the “publication of information by the regulator” enacted by New South Wales in the *Work Health and Safety (Mines) Act 2013*.

Disclosure of information

The CMSHA currently provides that a person must not disclose information concerning the personal affairs or commercially sensitive information unless the disclosure is made:

- With the consent of the person providing the information;
- In the administration of the Acts;
- In a proceeding under this Act, or a report of the proceedings; or
- In a proceeding before a court in which the information is relevant to the court.

The CMSHA also provides that the Chief Inspector of Mines can communicate anything that comes to the Chief Inspector’s knowledge to a person responsible for administering any law in Queensland, other States or the Commonwealth. These provisions do not limit information requested under the *Right to Information Act 2009*.

Clause 46 and Clause 89 of the Bill amends the CMSHA and the MQSHA respectively to allow the chief inspector or chief executive to disclose to the regulator of WorkCover, under the *Workers’ Compensation and Rehabilitation Act 2003*, any information the

chief inspector or chief executive has that relates to any matter in the course of administering these Acts without the consent of the person. While this is an abrogation of a person's right to keep personal and confidential information about a person private, this amendment is justified for a thorough investigation to be undertaken for matters related to the administration of these Acts.

Public register of certificates

The CMSHA and MQSHA are to be amended to (see Clause 29 and Clause 76) to require the Board of Examiners to keep a publicly-available register of certificates of competency; site senior executive (SSE) notices; and notices of registration given by the board under a mutual recognition Act.

The Board of Examiners is established under Pt 10 of the CMSHA and has functions described in Pt 10 of the CMSHA and Pt 10 of the MQSHA. The following certificates of competency are granted by the Board of Examiners:

- Open Cut Examiner
- Deputy's Certificate of Competency (Underground Coal Mines)
- Second Class Mine Manager (Underground Coal Mines)
- First Class Mine Manager (Underground Coal Mines)
- First Class Mine Manager (Underground Metalliferous Mines)

These amendments to establish the register result in a potential infringement of the fundamental legislative principle under section 4(2)(a) of the LSA. This is because the board could publish information contained in the register. Some of the information to be published may be personal information under the *Information Privacy Act 2009* (e.g. a person's name). However, the amendment specifically prevents the Board from publishing other private information such as personal contact details.

Currently, any agency, mine operator or other person wanting to confirm that a person is the holder of a valid certificate, notice or letter requires either the consent of the holder or alternatively may request access to the information under the Right to Information Act 2009.

The current approach is not only administratively arduous, particularly for employers seeking to confirm the qualifications of candidates for safety critical roles; it also detracts from promoting transparency in the mining industry.

While other agencies provide online public access to such information (e.g. Electrical licence holder search), there is currently no provision under Queensland's mining safety laws for the similar disclosure of a person's mining competency status.

The potential breach of fundamental legislative principles associated with the establishment of this public register is considered to be justified given that significant public-interest benefits associated with the establishment of the register.

Inspectors, inspection officers and authorised officers entering premises

Clauses 23 and 24 of the CMSHA and clauses 70 and 71 of the MQSHA clarify under what circumstances an inspector, an inspection officer or an authorised officer may enter a places. This may affect the rights and liberties of individuals and confers power to enter without a warrant.

The amendments adopt a similar approach to entry to places to that provided for inspectors under the Queensland *Work Health and Safety Act 2011*. An inspector, an inspection officer or an authorised officer may enter a place that the inspector, inspection officer or authorised officer is or reasonably suspects is a workplace.

This furthers the public interest to ensure that mines inspectors, inspection officers and authorised officers have access to all workplaces that may affect safety and health at mines.

Inclusion of civil penalties in subordinate legislation

The existing obligations and requirements to which a civil penalty may be applied are already provided for under the CMSHA and MQSHA.

The amendments to the CMSHA and MQSHA will create a civil penalty provision and detail the categories and penalty amounts which will be applied. Amendments to the MQSHR and CMSHR will prescribe the breaches of existing obligations and requirements under the Acts to which a civil penalty may be applied.

Civil penalties are necessary to provide for swift action to be taken to address non-compliance with existing obligations or requirements under the Act. This is particularly important where a breach has the potential to directly and immediately impact the safety and health of persons at the mine for example a failure to comply with certain safety and health obligations under the Act such as adopting safety and health management systems; or monitoring respirable dust.

Prescribing the breaches to which civil penalties apply within the regulations does not of itself create any new obligations or requirements. The CMSHA and MQSHA contain overarching safety and health obligations that must be achieved to maintain an acceptable level of risk to the safety and health of workers at a mine. For the majority of obligations for which a civil penalty could be applied, the detail of the obligation is articulated in the regulation. For this reason, the CMSHR and MQSHR will contain the prescribed breaches to which a civil penalty contained in the Act will apply. This is consistent with existing arrangements for offences about safety and health obligations.

Under section 4(4)(a) of the LSA whether legislation has sufficient regard to the institution of Parliament depends on whether a Bill allows the delegation of legislative power only in appropriate cases to appropriate persons. The provision creating the offence is contained in the CMSHA and MQSHA and relevant detail may exist in the regulation. Therefore this is considered to be an appropriate case for delegation to subordinate legislation.

Protection from liability

Clauses 45 and 88 of the Bill amend section 275AC of the CMSHA and section 254C of the MQSHA respectively, to expand the matters that the Minister, chief executive, commissioner or chief inspector may make or issue a public statement about. A public statement may identify particular information and persons.

These clauses also amend the relevant sections to broaden the ability to make a public statement about accidents or high potential incidents and to include any incident or other matter that may be relevant to persons seeking to comply with their safety and health obligations.

They also provide immunity from any liability for the State for anything done in good faith for the purpose of issuing a public statement. A similar immunity provision is provided for any person who publishes in good faith any information that was included in a public statement.

These changes result in a potential infringement of the fundamental legislative principle under section 4(2)(a) of the LSA, requiring that legislation must have sufficient regard to rights and liberties of individuals. In particular, the principles, 'whether legislation intrudes upon the privacy of individuals' and 'providing immunity from proceeding or prosecution without adequate justification'.

These provisions are considered justified because the proactive release of safety information through a public statement made by the Minister, chief executive, commissioner or chief inspector is imperative to minimising and or avoiding risk of injury or fatality of workers in the resources industry. It is essential that learnings following an accident or an investigation are communicated to the resources industry within a reasonable timeframe to ensure that workers are aware of any identified risks, and that the appropriate mechanisms are in place for the workers' protection. The existing sections provide that a public statement must not be issued unless it is in the public interest to do so.

In addition, the immunity from liability is justified to ensure that safety information can be communicated through the issuing of a public statement without the fear of legal proceedings being instituted. The protection applies to the State for anything done in good faith for the purpose of issuing a public statement. It also applies to a person who publishes, in good faith, information that has been included in a public statement.

The immunity from liability is necessary for the effective release of information about incidents or other safety and health matters at the earliest stage possible, and in order for the Minister, chief executive, commissioner or chief inspector to be able to carry out their statutory safety and health functions and not be reluctant to act through concerns about potential personal legal liability. The amendments are similar to the provision covering the publication of information by the regulator enacted by New South Wales in the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

Higher financial penalties

Clause 5 of the Bill amends the CMSHA and clause 53 of the Bill amends the MQSHA to increase the maximum financial penalties for failing to discharge a safety and health obligation. This is a FLP issue to be justified.

Similar higher penalties are already in the Queensland *Work Health and Safety Act 2011* for general workplaces and in other Australian jurisdictions including New South Wales, Tasmania and South Australia which have implemented similar higher financial penalties.

Mines and in particular underground coal mines are particularly hazardous working environments and it would not be even handed or just, if safety and health at mines is not also bolstered with similar potential maximum financial penalties for a breach, compared to the maximum penalties that apply for general workplaces under the Queensland *Work Health and Safety Act 2011*.

The higher penalties in the Queensland *Work Health and Safety Act 2011* were justified in the explanatory notes on the following grounds and the same or similar arguments apply to the CMSHA and MQSHA amendments that increase the maximum penalties:

'The increased maximum penalties reflect a combination of factors, including recommendations from the national review of WHS legislation throughout Australia to strengthen the deterrent effect of the penalties, to extend the ability of the courts to impose more meaningful penalties where appropriate and to emphasise to the community the seriousness of the offences under this legislation. There has also been a need to take account of inflation over the last 15 years since the WHS Act was introduced in Queensland. The quantum of the penalties supports the policy objective of the COAG endorsed national harmonised work health and safety framework, which is to promote national uniformity in the application of work health and safety laws and ensure that they are observed.'

As is the case with road safety provisions and traffic offences under the Transport Operations (Road Use Management) Act 1995 (the Transport Operations Act), the penalties are proportionate and relevant to the seriousness of the conduct, as there is a risk to personal safety and potential loss of life arising from any breaches... Importantly, the penalties in the WHS Bill 2011 are a maximum only and the courts will retain their discretion to impose lesser penalties depending on the circumstances of the breach and mitigating factors.'

New offences and maximum penalties

The maximum penalties introduced through clauses 16 and 65 are consistent with maximum penalty units applying in similar existing provisions covering competency requirements for persons in safety critical positions.

Liability of officers

Clause 12 of the Bill inserts a new part 3, division 3A into the CMSHA and clause 61 of the Bill inserts a new part 3, division 3A into the MQSHA to place a proactive, positive safety and health obligation on officers of corporations to exercise due diligence. Examples of due diligence are provided.

If a corporation has an obligation under the Act, the officers must exercise due diligence to ensure the corporation complies with the obligation. An officer may be convicted or found guilty of an offence relating to an obligation of the officer whether or not the corporation has been convicted or found guilty of an offence relating to an obligation of the corporation.

This may affect the rights and liberties of individuals, only if an officer does not take reasonable steps of due diligence.

The amendments create a positive duty on officers that applies immediately (i.e. the officer must be proactive in taking steps to ensure compliance by the company), rather than accountability only applying after contravention by the corporation. The requirements of due diligence apply whether or not there has been an incident and irrespective of whether the company is prosecuted.

The amendments in clause 43 of the CMSHA and in clause 86 of the MQSHA also address the fundamental legislative principle of whether legislation reverses the onus of proof (LSA, s 4(3)(d)) by placing the initial onus on the defence rather than the prosecution in relation to elements of an offence or elements of a defence or both, without adequate justification.

The amendments do this by removing the current reverse onus of proof of a defence, as it applies to executive officers requiring executive officers to provide evidence of their defence after the prosecution has proven the elements of an offence by the corporation. Currently, if a corporation is convicted of an offence, guilt is also imputed to an executive officer for failing to ensure the corporation has complied with the Act, unless the executive officer can discharge either or both defences (that is the defences that the officer exercised reasonable diligence to ensure the corporation complied or the officer was not in a position to influence the conduct of the corporation).

Consultation

DNRM released a Consultation Regulatory Impact Statement (RIS) titled *Queensland's Mine Safety Framework* in 2013 which outlined policy options for addressing the identified issues within the CMSHA and the MQSHA. The department received 246 responses at that time. Following analysis of submissions and further discussion with key stakeholders, multiple proposals outlined in the Consultation RIS did not proceed. A Decision RIS was prepared in 2014, but the Decision RIS was not released at the time.

Given the time lapse of the extensive consultation in 2013 to early 2016 and the potential of the feedback being outdated, the department formed tripartite working groups consisting of industry, union and departmental participants in February 2017

to consult on the essential proposals to be progressed in a Bill. The final proposals are broadly supported by industry and union. The advisory committees, established under the CMSHA and MQSHA, were also advised of the proposals.

The proposals relating to imposing civil penalties and the power for the chief executive to suspend or cancel a statutory certificates of competencies were the subject of limited consultation in August 2017. Industry did not indicate support for proposals to increase penalties or impose civil penalties, however this change brings mines into alignment with other workplaces. Industry has also raised concerns regarding the implementation of the proposal to require continuing professional development for certificate of competency holders, but in principle see benefit in the proposal. Further consultation will occur when the regulation is developed to implement the proposal.

Previous consultation to all government agencies in early 2017 resulted in concerns being expressed in relation to proposals not included in this Bill. The changes being delivered through this Bill that were subject to that earlier consultation were generally supported by all agencies.

The Office of Best Practice Regulation, Queensland Productivity Commission, has provided RIS exemptions for the amendments to introduce civil penalties and the power to suspend or cancel statutory certificates. Eight of the other amendments in the Bill require a post implementation review.

Other legislative proposals included in this submission were reviewed by the Queensland Productivity Commission in 2016 and 2017 and were assessed as unlikely to result in any significant adverse impacts. As such, further analysis under the Queensland Treasurer's RIS guidelines is not required.

The mines inspectorate within the Department of Natural Resources and Mines has worked with small scale and gem mines in recent years in order to prepare them for the SHMS requirements being established by the Bill. Unlike larger operators, it is recognised that smaller scale opal and gemstone mine operators may not have the administrative capability to set up and implement these systems. To assist, the mines inspectorate will provide resources including a simple SHMS template to assist small mine operators. Industry associations will be used to help implement the SHMS requirement.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland but will achieve greater mining safety and health consistency with the other major mining state of New South Wales in key areas, rather than uniformity of wording and structure of the Acts and Regulations. This is partly due to the different legislative models to be used by each state.

The Productivity Commission Report – *Lessons for National Approaches to Regulation* – noted that substantial value can still be gained from the achievement of significant levels of consistency in key areas such as technical and competency requirements, when high levels of uniformity are not possible.

This Productivity Commission Report also acknowledges that uniformity may not always be desirable. A more state specific approach may be based on considerations such as circumstances prevailing in the individual jurisdictions, the public interest and safety.

There are a broad range of approaches to harmonisation to achieve benefits. This Productivity Commission Report acknowledged that there may be different regulatory architecture across jurisdictions and different communities may have different attitudes to risk.

Notes on provisions

Part 1 Preliminary

Clause 1 states that when enacted, the short title will be the *Mines Legislation (Resources Safety) Amendment Act 2017*.

Part 2 Amendment of Coal Mining Safety and Health Act 1999

Act amended

Clause 2 states that part 2 of the Bill amends the *Coal Mining Safety and Health Act 1999* (the CMSHA).

Amendment of s 7 (How objects are to be achieved)

Clause 3 amends section 7(k) to clarify the objects of the CMSHA are also to provide for long-term health surveillance of coal mine workers, in addition to health assessment. The amended section 7(k) also extends health assessment and health surveillance of coal mine workers and former coal mine workers to include pre and post-employment assessments of workers to facilitate a more longitudinal approach to coal mine workers health assessment and surveillance.

Amendment of s 33 (Obligations for safety and health)

Clause 4 amends section 33 by inserting a new subsection (3) to include an officer of a corporation in the list of persons who have safety and health obligations under the CMSHA. The effect being that if a corporation has an obligation under the CMSHA, then the officer of the corporation has an obligation to exercise due diligence (established under the new division 3A Obligations of officers of corporations).

Replacement of s 34 (Discharge of obligations)

Clause 5 replaces section 34 to increase the maximum financial penalties to be more closely aligned with the maximum financial penalties in the *Work Health and Safety Act 2011*. The replacement section has also been expanded to specify maximum penalties for an officer of a corporation. This aligns with amendments made to section 33.

Amendment of s 40 (Obligations of holders)

Clause 6 amends section 40 to make minor wording changes to clarify the provision according to current drafting practice and omits the penalty for section 40(2).

Amendment of s 42 (Obligations of site senior executive for coal mine)

Clause 7 amends section 42 to clarify site senior executive (SSE) obligations related to managing contractors and service providers. It is critical that all personnel at a mine,

whether mine employees, contractors or service providers, operate under the same safety rules under the mine's single safety and health management system (SHMS).

It has always been the intent of the CMSHA that there be a single SHMS at a mine, with the risk assessment method conducted by the SSE, management and a cross-section of the workforce to determine the safest and healthiest manner in which a task or control was to be undertaken and that all individuals on site would perform the task in the same manner.

However, Coronial inquiries surrounding two fatal incidents recommended that the legislation be made clearer to ensure there be a single SHMS at a mine and all persons must comply with that system. The legislation was subsequently amended in 2011.

The Mines Inspectorate has not found widespread confusion at mines about how a single and effective SHMS can be achieved. However, some stakeholders including some new to the industry, despite the 2011 amendment, continue to question how a single and effective SHMS can be achieved. These stakeholders have pointed out that the legislation does not guide mine operators or contractors and service providers as to how they should work together to achieve the single SHMS.

Together with amendments to sections 43 and 47 covering the obligation of contractors and service providers, the amendments collectively clarify what SSEs and contractors are required to do to ensure everyone is part of and following a single SHMS at a mine site. The amendments collectively provide further guidance about how a single and effective SHMS is to be achieved, so that everyone onsite will be following the same critical safety procedures.

It is crucial that a contractor or service provider who may irregularly work at a mine understands the mine environment and follows the robust safety disciplines necessary to effectively manage risk. It is essential that contractors and service providers comply with the single safety health management system and are effectively integrated within the mine's single overall system.

Subclause (1) amends section 42(b) so it applies broadly, including all coal mine workers.

Subclause (2) replaces the former section 42(c) and confirms the obligations of the SSE.

If a contractor is engaged to undertake tasks normally undertaken at the mine (e.g. underground development drives or truck and shovel operations) then the contractor's employees must be trained and assessed in the mine's SHMS.

Although contractors may have specialist expertise for their particular work at a mine they may not understand without assistance, the essential safety discipline and safety critical processes required at mines under the SHMS. Therefore, even contractors who may identify risks and controls for their own specialised work are not to be at odds with the single integrated SHMS and are to conduct their work in accordance with the overarching, single integrated SHMS. The same may apply for providers of services at mines who may also fall within the category of contractor.

On occasion, there may be instances where a contractor is engaged to undertake a specialist task that is not normally undertaken on site (e.g. belt vulcanisation) and the mine's SHMS does not already cater for that task. In this event, the specialist contractor will present their operating safety system documentation and standard operating procedures to the SSE who will review it to ensure there is no conflict with the existing single SHMS in force at the mine site.

If there is a conflict, the contractor's safety and health management plans/procedures must be altered to meet the site safety requirements and the contractor's employees trained and assessed in the alternate methods. Of course, if the contractor believes they have a more effective safety and health management plans/procedures for the particular task, it can be discussed with the SSE. If the SSE agrees that the contractor does have a more effective system, the SSE in accordance with the Regulations should have a cross section of the workforce review and develop the system so that the mine's SHMS incorporates the better elements. The implementation of those new systems should then include the retraining and assessment of all relevant personnel.

It is absolutely critical that all mine workers use the same methodology and systems to achieve a task. It is a potential hazard if mine workers on a site could be working to different rules and objectives. This single system approach ensures all personnel working on site are subject to the same and most effective safety rules for each task and are inducted, trained and assessed in these procedures.

Subclause (3) replaces the former section 42(e) and clarifies the obligations of the SSE.

Subclause (4) inserts a new paragraph (vi) at section 42(f) which places an obligation on the SSE to ensure adequate supervision and monitoring of contractors and service providers at the mine.

Subclause (5) renumbers the replacement sections 42(ca) to (f) as sections 42(d) to (i).

Replacement of s 43 (Obligations of contractors)

Clause 8 complements the amendments to section 42 by updating section 43 to provide further guidance about the obligations of contractors and how the contractor is to work with the SSE to ensure the contractor's safety and health management plan is integrated with the mine's single SHMS.

Amendment of s 44 (Obligations of designers, manufacturers, importers and suppliers of plant etc. for use at coal mines)

Clause 9 amends section 44 to insert a requirement through section 44(4)(aa) that if a designer, manufacturer, importer or supplier becomes aware of a hazard or defect associated with plant that may create an unacceptable level of risk to users of the plant, to inform the chief inspector, of the nature of the hazard or defect and its significance, and any modifications or controls of which the designer, manufacturer, importer or supplier is aware that have been developed to eliminate or correct the

hazard or defect or manage the risk. The clause also requires the designer, manufacturer, importer or supplier to inform the chief inspector of the name of each coal mine operator, contractor or service provider the substance was supplied to and what steps have been taken to notify them of the hazard or defect associated with plant. Subclauses (2) and (3) renumbers applicable paragraphs. Subclauses (4) and (5) amend section 44(6) for consistency with the other changes to the section by including references to service providers.

Amendment of s 46 (Obligations of manufacturers, importers and suppliers of substances for use at coal mines)

Clause 10 amends section 46 to insert a requirement through section 46(2)(aa) that if a manufacturer, importer or supplier of a substance becomes aware of a hazard or defect associated with substance, that may create an unacceptable level of risk to users of the substance, to inform the chief inspector, of the nature of the hazard or defect and its significance, and any modifications or controls of which the manufacturer, importer or supplier is aware that have been developed to eliminate or correct the hazard or defect or manage the risk. The clause also requires the manufacturer, importer or supplier to inform the chief inspector of the name of each coal mine operator, contractor or service provider the substance was supplied to and what steps have been taken to notify them of the hazard or defect associated with substance. Subclauses (2) and (3) renumbers applicable paragraphs. Subclause (4) inserts a new section 46(4), based on section 44(6), to place an obligation on a supplier of a substance to notify the mine operator, contractor or service provider of any hazard or defect in the use of the substance and any corrective actions to address the hazard or defect.

Replacement of s 47 (Obligation of provider of services at coal mines)

Clause 11 complements the amendments to sections 42 and 43 by amending section 47 to provide further guidance about the obligations of service providers and how the service provider is to work with the SSE to ensure the service provider's safety and health management plan is integrated with the mine's single SHMS.

Insertion of new pt 3, div 3A

Clause 12 inserts a new section 47A (within new division 3A *Obligations of officers of corporations*) to support the changes made to section 33. New section 47A casts a positive duty on officers (as defined in the schedule 3 *Dictionary*) of a corporation that has an obligation under the CMSHA to exercise 'due diligence' to ensure that the corporation complies with any obligation under the CMSHA. Section 47A(2) clarifies that an officer may be convicted or found guilty of an offence relating to an obligation of the officer whether or not the corporation was convicted or found guilty of an offence under the CMSHA.

These provisions reflect a policy shift away from deeming that an officer also commits an offence if a corporation commits an offence against the CMSHA, to officers having a positive obligation to exercise due diligence. The positive obligation requires officers to be proactive and means that officers owe a continuous obligation to ensure compliance with obligations under the CMSHA. There is no need to tie an officer's

failure to any failure or breach of the relevant corporation, for the officer to be prosecuted under this clause. Importantly, this change helps to clarify the steps that an officer must take to comply with the obligations under this section.

Section 47A(3) contains a non-exhaustive list of reasonable steps an officer must take to discharge their obligations under this section, including acquiring and keeping up-to-date knowledge of mine safety and health matters and ensuring the corporation has, and implements, processes for complying with any obligation the corporation has under the CMSHA.

An officer must have high, yet attainable, standards of due diligence. These standards should relate to the position and influence of the officer within the corporation. What is required of an officer should be directly related to the influential nature of their position. This is because the officer governs the corporation and makes decisions for management. A high standard requires persistent examination and care, to ensure that the resources and systems of the corporation are adequate to comply with the obligations required of a corporation. Where the officer relies on the expertise of a manager or other person, that expertise must be verified and the reliance must be reasonable. Section 47A(4) clarifies that the obligations on officers of a corporation under the new section 47A do not apply to the SSE or persons reporting to the SSE. The reason for this clarification is that the SSE and other statutory positions already have their obligations specified in detail under the CMSHA.

Amendment of s 48 (Defences for div 2 or 3)

Clause 13 amends the heading and subsection (1) of section 48 to align with the insertion of officer obligations at section 33 and new division 3A *Obligations of officers of corporations*.

Amendment of s 54 (Appointment of site senior executive)

Clause 14 amends section 54 to clarify that a coal mine operator cannot appoint a site senior executive for a coal mine, or separate part of a surface mine, unless the person holds a site senior executive notice. The clause also renumbers applicable paragraphs.

Amendment of s 55 (Management structure for safe operations at coal mines)

Clause 15 amends section 55 by inserting the requirement to provide that the management structure for safe operations at coal mines is to include the name of the person who is responsible for managing the system of work for contractors and service providers at the coal mine.

Replacement of s 61 (Appointment of ventilation officer)

Clause 16 replaces section 61 to enhance the qualification requirements for the safety critical role of ventilation officer for an underground mine. Ventilation officers are of critical importance to the occupational health and safety of workers. The atmosphere that is breathed in can be reduced to sub-standard or dangerous conditions if contaminants produced in the course of operations are not controlled, safely extracted

or diluted to harmless levels. This is particularly critical in underground coal mines due to potentially explosive atmospheres being present if not appropriately controlled.

The replacement section 61 requires the underground mine manager to appoint a ventilation officer for an underground mine. Section 61(3) provides that the underground mine manager may be appointed by the SSE as the ventilation officer. Section 61(4) requires that only a person holding a certificate of competency for ventilation officers granted by the Board of Examiners (the Board) must be appointed to the role of ventilation officer. The reason for this change is that obtaining a certificate of competency includes an assessment component undertaken by the Board, which ensures a person is competent to undertake the responsibilities of a ventilation officer.

Section 61(5) outlines the ventilation officer's responsibility for establishing effective standards of ventilation for, and implementation of the ventilation system for, the mine. Section 61(6) reflects the former section 61(8) and provides that the underground mine manager must not appoint an individual as the ventilation officer for more than one underground mine, unless the chief inspector is satisfied the person can effectively carry out the duties at both mines, and has provided the underground mine manager with a notice stating this.

The clause also inserts a new section 61A to deal with the temporary absence of a ventilation officer appointed for a mine. Sections 61A(2) and (3) provide that where the period of absence is 7 days or less, the duties and responsibilities of the ventilation officer are taken to be assumed by the underground mine manager whether or not the underground mine manager holds a ventilation officers' certificate of competency. Section 61A(4) reflects the former section 61(7) and provides that an inspector may require an underground mine manager, who is assuming the duties and responsibilities of the ventilation officer, to demonstrate they can effectively carry out the duties and responsibilities of both roles while the ventilation officer is temporarily absent. If the inspector is not satisfied the underground mine manager is sufficiently competent, a person holding a ventilation officers' certificate of competency must be appointed for the remaining period of absence. Where the period of absence of the appointed ventilation officer is more than 7 days, sections 61A(5) and (6) require the underground mine manager to appoint another person holding a ventilation officers' certificate of competency as ventilation officer for the mine.

Amendment of s 62 (Safety and health management system)

Clause 17 amends section 62 to clarify that there is to be a single SHMS for a mine. This clarification is consistent with the existing section 42(c) which requires the SSE to "to develop and implement a single SHMS for all persons at the mine". Subclause (1) inserts new sections 62(2A) and (2B) which clarify that the SHMS is to apply for the management of all aspects of risks affecting safety and health in relation to the operation of the mine, and that the SHMS must be in place prior to commencing operations. This clarification also supports changes made to sections 42, 43 and 47 in relation to contractor and service provider management. The clause also renumbers applicable paragraphs.

Amendment of s 62A (Additional requirement for coal mining operation for incidental coal seam gas)

Clause 18 amends section 62A to reflect amendments to section 62 in providing for a single safety and health management system.

Amendment of s 73C (Commissioner's functions)

Clause 19 amends section 73C to reflect the term 'safety and health' in preference to 'health and safety'. This amendment ensures the use of consistent terminology throughout the CMSHA.

Amendment of s 78 (Membership of committee)

Clause 20 amends section 78(1) to increase the overall number of members of the coal mining safety and health advisory committee (the committee) from nine to 10 members. The committee currently consists of nine members, one of whom is the chairperson. The chairperson of the committee is the Commissioner for Mine Safety and Health. Other than the Commissioner the committee has three members representing industry workers, three representing mine operators and two members from the mines inspectorate (as specified under section 80(3)). Historically the person appointed to the Commissioner role was also a departmental employee, effectively meaning equal tripartite representation across the committee. With the appointment of an independent Commissioner in 2016, there is no longer an equal number of departmental representatives compared with mine operator and worker representatives on the committees. The objective is to increase the number of departmental (mines inspectorate) members of the committee from two to three members, which will bring the total number of members on each committee to 10 persons (including the Commissioner). The intent of the change made by this clause is consistent with, and supported by, the changes made to section 80 and new section 80A.

Amendment of s 80 (Appointment of members)

Clause 21 amends section 80 to separate out the appointment of members from panels (i.e. those nominated by mine operator and worker representative organisations) from inspector appointments which do not go through a panel process (both of which were dealt with under the former section 80). Subclauses (1), (2) and (4) make amendments to remove the inspector related content of the heading and within the provision. Note that inspector appointments are addressed under a new section 80A.

Subclause (3) amends section 80(4) to provide the Minister discretionary power to appoint a person from a panel even if the person does not have the required 'coal mining operations' experience (which has a defined meaning under the CMSHA). While this experience is highly regarded, at times proposed representatives for appointment will not be able to meet the experiential requirement. This has particularly been an issue for worker representatives proposed for appointment to the mining safety and health advisory committee under the section 71 of the *Mining and Quarrying Safety and Health Act 1999* (the MQSHA); however, the proposed

amendments should be consistent across both the CMSHA and MQSHA. Note that the Bill also amends the experiential requirement under section 71 of the MQSHA.

Insertion of new s 80A

Clause 22 inserts a new section 80A to provide that the chief inspector is a member of the committee and that the Minister must appoint two additional inspectors as members. In practice, the chief inspector is always appointed as a member of the committee. The need for this amendment has arisen because all persons currently appointed as members of the committee under the CMSHA are appointed as individuals, rather than by position. The current approach is administratively burdensome in relation to departmental employees (i.e. inspectors) in the event of resignations or extended periods of absence and is inconsistent with recommendations of the “Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities” that appointments be made by position where possible.

This practice is permissible under s24A of the *Acts Interpretation Act 1954*, which provides that appointments may be made by the title of an office and that the appointee is taken to be the person occupying or acting in the office. The appointment of public service office holder positions, as opposed to individuals by name, removes the requirement for the appointee to tender a resignation upon ceasing employment with the public service or leaving the relevant position. The new section 80A(1) overcomes this by providing that the chief inspector is a standing member of the committee.

Amendment of s 133 (Entry to places)

Clause 23 amends section 133(1)(e) to provide for entry at any time by an officer into any place that is, or the inspector reasonably suspects is, a workplace. Subclause (2) clarifies that section 133(2) relates to asking the occupier for consent to enter under section 133(1)(a). Subclause (3) replaces section 133(3) to clarify that consent from the person with management or control of the workplace is not required to affect entry under section 133(1)(e).

Insertion of new s 138A

Clause 24 includes a new section 138A which places limitations on entry powers of inspectors to places where the place may also be used for residential purposes.

Amendment of s 181 (Obstructing inspectors, officers or industry safety and health representatives)

Clause 25 amends section 181 to reflect the term ‘safety and health’ in preference to ‘health and safety’. This amendment ensures the use of consistent terminology throughout the CMSHA.

Amendment of s 185 (Functions of board of examiners)

Clause 26 amends section 185 regarding functions of the Board of Examiners. A new section 185(da) is inserted to include the issuing of site senior executive notices to persons who have demonstrated safety and health competencies to the Board of Examiners' satisfaction. Subclause (2) renumbers applicable paragraphs.

Amendment of s 186 (Membership and conduct of board proceedings)

Clause 27 amends section 186 to include a new section 186(3A) to provide that the chief inspector (under the CMSHA) and the chief inspector of mines (under the MQSHA) are members of the Board of Examiners, making them standing members. In practice, the two chief inspectors are always appointed as members of the Board of Examiners, so this change confirms contemporary practice. The need for this amendment has arisen because all persons currently appointed as members of the Board of Examiners under the CMSHA are appointed as individuals, rather than by position. The current approach is administratively burdensome in relation to departmental employees (i.e. inspectors) in the event of resignations or extended periods of absence and is inconsistent with recommendations of the "Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities" that appointments be by position where possible.

This practice is permissible under section 24A of the *Acts Interpretation Act 1954*, which provides that appointments may be made by the title of an office and that the appointee is taken to be the person occupying or acting in the office. The appointment of public service office holder positions, as opposed to individuals by name, removes the requirement for the appointee to tender a resignation upon ceasing employment with the public service or leaving the relevant position. The new section 186(3A) overcomes this by providing that the two chief inspectors are standing members of the Board of Examiners.

Subclause (2) replaces section 186(4), renumbered as section 186(5), as a consequence of the new section 186(3A) which means the two chief inspectors don't need to be appointed as they are standing members. The former section 186(4) provided for at least two, but no more than three members being members of the Board of Examiners; however, with the new section 186(3A), there is now only one possible inspectorate position remaining that may be filled by appointment. Section 186(5) aims to retain existing competency standards for the remaining inspectorate position by requiring the third inspectors member (if appointed) to hold either of the two certificates of competency. Subclause (3) amends section 186(7) to align with the new section 186(3A).

Amendment of s 188 (Appointment of board of examiners)

Clause 28 amends section 188 to align with the new section 186(3A) by clarifying that it will not be necessary for the chief inspector or chief inspector of mines under the MQSHA to be appointed by the Governor in Council in a gazettal notice.

Insertion of new s 193A

Clause 29 inserts a new section 193A to require the Board of Examiners to keep a register of certificates of competency, site senior executive notices (SSE notices) and notices of registration under mutual recognition arrangements.

The amendment clarifies current difficulties and uncertainties about releasing information about whether a person is the holder of a certificate of competency, SSE notice, or notice of registration. As this is considered personal information, issues have arisen through right to information and other processes, as there is currently no legislative provision to facilitate the effective release of this information.

Currently, any agency, mine operator or other person wanting to confirm that a person is the holder of a valid certificate, SSE notice or notice of registration requires either the consent of the holder or alternatively may request access to the information under the *Right to Information Act 2009*. The current approach is not only administratively burdensome, particularly for employers seeking to confirm the qualifications of candidates for safety critical roles; it also detracts from promoting transparency in the mining industry.

While other agencies provide online public access to such information (e.g. online electrical licence holder search), there is currently no provision under Queensland's mining safety laws for similar disclosure of a person's mining competency status.

New section 193A addresses the identified transparency issues surrounding the mining competency status of persons by requiring the Board of Examiners keep a register in relation to certificates of competency, SSE notices and notices of registration. Section 193A(2) specifies the information that must be included in the register including the holder's name, contact details, details and status of the certificate or notice, and any other information prescribed under a regulation. Section 193A(3) provides for the disclosure of information contained in the register, other than a person's contact details, to any person or agency. Section 193A(4) provides the meaning of *mutual recognition Act* for the section.

Insertion of new s 194A

Clause 30 inserts a new section 194A to clarify that the Board of Examiners, among other things, may have regard to previous suspension or cancellation of a certificate of competency or site senior executive notice in deciding whether to grant a certificate or notice to an applicant for or previous holder of a suspended or cancelled certificate or notice in the future.

Amendment of s 195 (Obtaining certificates of competency by fraud)

Clause 31 amends section 195 (1) and (2) to include references to SSE notices. The clause also inserts a new section 195(3) to provide that the Board of Examiners must give notice of a decision to cancel a certificate of competency or SSE notice obtained fraudulently.

Amendment of s 196 (Return of certificate of competency)

Clause 32 amends section 196 to include an SSE notice must be returned to the Board of Examiners when suspended or cancelled. The clause also includes the return of a certificate or notice where the chief executive has made a decision to suspend or cancel a certificate or notice.

Insertion of new s 196A

Clause 33 inserts new section 196A to clarify that the appointment of a person, which is reliant on the person holding either a certificate of competency or SSE notice, ends on the suspension or cancellation of the certificate or notice.

Insertion of new pt 10A

Clause 34 inserts a new part 10A to clarify the grounds for suspension or cancellation of a certificate of competency and the procedure required of the chief executive in providing a notice of proposed action and the details to be included in that notice. The chief executive will consider all written submissions made within the required time and must inform the person of the decision by notice. If the decision is to suspend or cancel the certificate of competency the notice must state the decision and reasons for it and that the person may appeal and provide the appeal process.

Amendment of s 198 (Notice of accidents, incidents, deaths or diseases)

Clause 35 amends section 198. Subclause (1) makes minor wording changes to clarify the provision according to current drafting practice. Subclause (2) inserts a new section 198(7) to place an obligation on a person prescribed under a regulation to give notice when the person becomes aware of a coal mine worker being diagnosed with a reportable disease. The intent of this provision is to extend the reportable disease notification requirement from the SSE to also including other persons that would be in a position to make a notification (e.g. a medical practitioner making the diagnosis of a reportable disease). Subclause (2) also inserts a new section 198(8) which provides the definition for reportable diseases to be prescribed by regulation.

Amendment of pt 14, div 1, hdg (Appeals against particular decisions of Minister or board of examiners)

Clause 36 amends the heading of part 14, division 1 to include the chief executive.

Insertion of new s 236A

Clause 37 inserts a new section 236A introduce appeal rights to the Industrial Magistrates Court against the chief executive's decision notice about whether a person's certificate of competency or a SSE notice is suspended or cancelled, or for imposing a civil penalty.

Amendment of s 238 (How to start appeal)

Clause 38 amends section 238 to include the chief executive's decision in relation to serving a notice of appeal. The clause also renumbers applicable paragraphs.

Amendment of s 240 (Hearing procedures)

Clause 39 amends section 240 to insert a new section 240(2A) which does not allow for new information to be taken into account that was not available to the chief executive in making a decision when an appeal against a decision of the chief executive is being decided. Subclause (2) amends the definition of original decision-maker to include the chief executive. Subclause (3) renumbers applicable paragraphs.

Amendment of s 252 (Evidentiary aids)

Clause 40 amends section 252(1)(b) to also apply for notices.

Amendment of s 258 (Court may order suspension or cancellation of certificate)

Clause 41 amends section 258 to also apply to SSE notices in addition to certificates of competency. Subclause (3) inserts a new section 258(4) to require the industrial magistrate to give notice of suspension or cancellation of a certificate to the relevant SSE (where the person with the cancelled certificate works), or give notice of cancellation of a SSE notice to the relevant coal mine operator.

Amendment of s 261 (Responsibility for acts or omissions of representatives)

Clause 42 amends section 261 to replace references to 'reasonable diligence' with 'reasonable precautions and proper diligence'. Subclause (2) amends the definition of *representative* to replace the reference to 'executive officer' with 'officer' to align with changes to officer obligations.

Omission of s 262 (Executive officers must ensure corporation complies with Act)

Clause 43 omits section 262 as a consequence of the introduction of changes to officer obligations made by the insertion of new Part 3A *Obligations of officers of corporations*.

Insertion of new pt 15B

Clause 44 inserts a new part 15B to provide for civil penalties. The new section 267E defines the civil penalty obligations, corresponding offence, penalty notice, proposed penalty notice and relevant corporation. The new section 267F provides that a relevant corporations who is a coal mine operator or contractor will be liable for a civil penalty where the relevant corporation contravenes a civil penalty obligation; or a representative of the relevant corporation contravenes a civil penalty obligation. Section 267F provides for 3 categories of civil penalties: 1,000 penalty units for category 1, 1,750 penalty units for category 2 and 500 penalty units for category 3.

The new section 267G provides for a notice to be given where the chief executive believes a relevant corporation is liable to a civil penalty. The section also contains information of the details that must be included in the proposed penalty notice. Where a corporation is given a notice they will have within 14 days, or a date later specified, to respond. The new section 267H provides for a relevant corporations submission to be made.

The new section 267I provides for the chief executive to give a penalty notice where the chief executive is satisfied a civil penalty obligation has been contravened and the relevant corporation is liable to a civil penalty on the grounds of the contravention. The section provides for the detail in the penalty notice. The section also provides that the person may appeal the decision to the Industrial Magistrates Court. The State may recover the penalty from the corporation as a debt.

The new section 267J provides when a civil penalty cannot be imposed after criminal proceedings.

The new section 267K provides that a criminal proceeding may be started against a relevant corporation for a corresponding offence for a contravention of a civil penalty obligation regardless of whether a civil penalty has been imposed on the corporation for the contravention.

Amendment of s 275AC (Public statements)

Clause 45 amends section 275AC to broaden the matters about which information may be released and clarifies matters of liability. The proactive release of safety information by regulators (e.g. safety alerts about incidents) enables industry to implement key learnings in a timely manner. While the former section 275AC does provide for making and issuing public statements; the provision is limited compared to other regulators (e.g. NSW), which have specific provisions intended to facilitate early information flow from regulators after an incident while protecting the regulator from any proceedings against it for the release of the information. The aim of this being that industry will learn from the information and be encouraged to improve in relation to safety and health management and prevention strategies.

Subclauses (1), (2), (3) and (4) amend section 275AC(1) to enable information to be released about accidents (including serious accidents) and high potential incidents as well as any incident or other matter that may be relevant for a person's compliance with safety and health obligations. These subclauses also broaden the range of information that may be released at section 275AC(1) to align with changes made by the Bill in relation to the suspension or cancellation of a certificate of competency or SSE notice under the new Part 10A.

Subclause (5) inserts sections 275AC(4), (5) and (6) to clarify that no liability is incurred, including in defamation, by the State or a person publishing the information included in a public statement where the action is done in good faith. The improvements to section 275AC will facilitate the early information flow from regulators after an incident; improve consistency with NSW provisions; and provide appropriate

protection for the Minister, chief executive, commissioner and chief inspector from any potential proceedings against them for the release of the information (e.g. defamation).

Amendment of s 275A (Disclosure of information)

Clause 46 amends section 275A to provide that the chief inspector or chief executive may disclose to the Regulator or Work Cover, under the *Workers' Compensation and Rehabilitation Act 2003*, any information that the chief inspector or chief executive has that relates to the matter under the Act. The disclosure of personal information is necessary for the effective operation of the *Workers' Compensation and Rehabilitation Act 2003*.

Insertion of new pt 20, div 7

Clause 47 inserts new division 7 Transitional provisions for *Mines Legislation (Resources Safety) Amendment Act 2017* into part 20.

Section 307 (*Definitions for division*) defines the terms: *amended*, and *transitional period* for the purpose of the section.

Section 308 (*Appointment of ventilation officers for underground mines during transitional period*) provides that amended sections 61(3) or 61A(6) prohibiting underground mine managers from appointing a person as ventilation officer, or acting ventilation officer, for an underground mine unless the person holds a person holds a ventilation officer's certificate of competency does not apply during the transitional period (which ceases 3 years from the date of commencement).

Section 309 (*Ventilation officers holding office when transitional period ends*). Section 309(1) establishes the application of the section to person's in the role ventilation officer either by appointment or temporarily when the transitional period ends. Section 309(2) provides that the person's appointment ceases when the transitional period ends unless the person holds the required ventilation officer's certificate of competency, or the person's appointment is extended by the chief inspector for a period of up to three years.

Section 309(3) caveats the possible extension under section 309(2)(b) that the person must have taken steps to obtaining the required certificate of competency, and stipulates that extensions of more than two years would only be permitted in limited exceptional circumstances. There is an expectation that the initial three year transitional period should be sufficient for a person to gain the required certificate of competency.

Sections 309(4) and (5) provide that conditions may be imposed by the chief inspector on any extension granted under section 309(3), and that a failure to comply with any conditions will result in the person's appointment ending. Section 309(6) clarifies that the section applies despite of section 61 which deals with the appointment of ventilation officers.

Section 310 (*Existing site senior executive notices*) provides for the continuation of any SSE notice issued prior to commencement.

Amendment of sch 2 (Subject matter for regulations)

Clause 48 amends schedule 2, part 2 to replace item 29 to extend the coverage of item 29 to also deal with matters pertaining to the health of persons who have been employed at a coal mine. This will allow the regulation to address matters relating to persons previously employed at a coal mine (e.g. retired coal mine workers). The clause also specifies the matters that may be addressed under the regulation.

Subclause (2) inserts new item 2A which identifies continuing professional development requirements, as decided by the Board of Examiners, for holders of certificates of competency and SSE notices as a matter that may be addressed under a regulation. This will clarify and confirm that the functions of the Board of Examiners are not limited to deciding only the competencies necessary to hold a certificate of competency, but also extend to deciding matters pertaining to continuing professional development of certificate of competency and SSE notice holders (e.g. competencies necessary to hold a practising certificate). This change aligns with the functions of the equivalent NSW Board of examiners, which are broadly stated (under NSW legislation) and which facilitate both the certificate of competency and the practising certificate schemes. In contrast, the current functions of the Queensland Board of Examiners are prescriptive and it is unclear if these functions would extend to also cover requirements for practising certificates (should these be introduced at a later date in Queensland).

Amendment of sch 3 (Dictionary)

Clause 49 amends the dictionary at schedule 3. Subclause (1) omits the definitions of executive officer, officer and the second mention of SHMS as a consequence of amendments made by the Bill. Subclause (2) inserts new definitions for civil penalty obligation, corresponding offence, officer, penalty notice, proposed action, proposed action notice, proposed penalty notice, relevant corporation, service provider, site senior executive notices, supplier and workplace.

Subclauses (3) amends the definition of coal mine worker to also include a service provider or employee of a service provider. Subclause (4) amends the first occurring definition *safety and health management system* to clarify that definition relates to the single SHMS for the mine. This is consistent with the replacement of section 62 and insertion of new section 62AA.

Part 3 Amendment of Mining and Quarrying Safety and Health Act 1999

Act amended

Clause 50 states that part 3 amends the *Mining and Quarrying Safety and Health Act 1999* (the MQSHA)

Amendment of s 7 (How objects are to be achieved)

Clause 51 amends section 7 to insert a new paragraph (j) to provide for the health assessment and health surveillance of mine workers, as well as for health surveillance of former mine workers.

Amendment of s 30 (Obligations for safety and health)

Clause 52 amends section 30 by inserting a new subsection (3) to include an officer of a corporation in the list of persons who have safety and health obligations under the CMSHA. The effect being that if a corporation has an obligation under the CMSHA, then the officer of the corporation has an obligation to exercise due diligence (established under the new division 3A Obligations of officers of corporations).

Replacement of s 31 (Discharge of obligations)

Clause 53 replaces section 31 to increase the maximum financial penalties to be more closely aligned with the maximum financial penalties in the *Work Health and Safety Act 2011*. The replacement section has also been expanded to specify maximum penalties for an officer of a corporation. This aligns with amendments made to section 30.

Amendment of s 37 (Obligations of holders)

Clause 54 amends section 37 to make minor wording changes to clarify the provision according to current drafting practice.

Amendment of s 38 (Obligations of operators)

Clause 55 amends section 38 to omit subsections (3) and (4) removing the former exemptions so that obligations apply to all operators regardless of the size, nature, and complexity of the mine's operation.

Amendment of s 39 (Obligations of site senior executive for mine)

Clause 56 amends section 39 to clarify SSE obligations related to managing contractors and service providers. It is critical that all personnel, whether mine employees, contractors or service providers operate under the same safety rules under the mine's single SHMS.

It has always been the intent that there be one single SHMS at a mine, with the risk assessment method conducted by SSEs and management and a cross section of the workforce determining the safest and healthiest manner in which a task or control was to be undertaken and that all individuals on site would perform the task in the same manner.

However, Coronial inquiries surrounding two fatal incidents recommended that the legislation be made clearer to ensure there be only one, 'a single' SHMS at a mine and all persons must comply with that system. The legislation was subsequently amended in 2011.

The Mines Inspectorate has not found widespread confusion at mines about how a single and effective SHMS can be achieved. However, some stakeholders including some new to the industry, despite the 2011 amendment, continue to question how a single and effective SHMS can be achieved. These stakeholders have pointed out that the legislation currently does not guide mine operators or contractors and service providers as to how they should work together to achieve the single SHMS.

Together with amendments to sections 40 and 44 covering the obligation of contractors and service providers, the amendments collectively clarify what SSEs and contractors are required to do to ensure everyone is part of and following a single SHMS at a mine site. The amendments collectively provide further guidance about how a single and effective SHMS is to be achieved, so that everyone onsite will be following the same critical safety procedures.

It is crucial that a contractor or service provider who may irregularly work at a mine understands the mine environment and follows the robust safety disciplines necessary to effectively manage risk. It is essential that contractors and service providers comply with the single safety health management system and are effectively integrated within the mine's single overall system.

Subclause (1) amends section 39(1)(b) so it applies broadly, including all mine workers.

Subclause (2) replaces the former section 39(1)(c) and confirms the obligations of the SSE.

If a contractor is engaged to undertake tasks normally undertaken at the mine then the contractor's employees must be trained and assessed in the mine's SHMS.

Although contractors may have specialist expertise for their particular work at a mine they may not understand without assistance, the essential safety discipline and safety critical processes required at mines under the SHMS. Therefore, even contractors who may identify risks and controls for their own specialised work are not to be at odds with the single integrated SHMS and are to conduct their work in accordance with the overarching, single integrated SHMS. The same may apply for providers of services at mines who may fall within the category of contractor.

On occasion, there may be instances where a contractor is engaged to undertake a specialist task that is not normally undertaken on site (e.g. belt vulcanisation) and the mine's SHMS does not already cater for that task. In this event, the specialist contractor will present their operating safety system documentation and standard operating procedures to the SSE who will review it to ensure there is no conflict with the existing single SHMS in force at the mine site.

If there is a conflict, the contractor's safety and health management plans/procedures must be altered to meet the site safety requirements and the contractor's employees trained and assessed in the alternate methods. Of course, if the contractor believes they have a more effective safety and health management plan/procedure for the particular task, it can be discussed with the SSE. If the SSE

agrees that the contractor does have a more effective system, the SSE in accordance with the Regulations should have a cross section of the workforce review and develop the system so that the mine's SHMS incorporates the better elements. The implementation of those new systems should then include the retraining and assessment of all relevant personnel.

It is absolutely critical all mine workers use the same methodology and systems to achieve a task. It is a potential hazard if mine workers on a site are working to different rules and objectives. This single system approach ensures all personnel working on site are subject to the same and most effective safety rules for each task and are inducted, trained and assessed in these procedures.

Subclause (3) replaces the former section 39(1)(e) and clarifies the obligations of the SSE.

Subclause (4) inserts a new paragraph (vi) at section 39(1)(f) which places an obligation on the SSE to ensure adequate supervision and monitoring of contractors and service providers at the mine.

Subclause (5) renumbers the replacement sections 39(1)(ca) to (f) as sections 39(1)(d) to (i).

Subclause (6) omits sections 39(2) and (3).

Replacement of s 40 (Obligations of contractors)

Clause 57 complements the amendments to section 39 by replacing section 40 to provide further guidance about the obligations of contractors and how the contractor is to work with the SSE to ensure the contractor's safety and health management plan is integrated with the mine's single SHMS.

Amendment of s 41 (Obligations of designers, manufacturers, importers and suppliers of plant etc. for use at mines)

Clause 58 amends section 41 to insert a requirement through section 41(4)(aa) that if a designer, manufacturer, importer or supplier becomes aware of a hazard or defect associated with plant that may create an unacceptable level of risk to users of the plant, to inform the chief inspector, of the nature of the hazard or defect and its significance, and any modifications or controls of which the designer, manufacturer, importer or supplier is aware that have been developed to eliminate or correct the hazard or defect or manage the risk. The clause also requires the designer, manufacturer, importer or supplier to inform the chief inspector of the name of each operator, contractor or service provider the substance was supplied to and what steps have been taken to notify them of the hazard or defect associated with plant. Subclauses (2) and (3) renumbers applicable paragraphs. Subclauses (4) and (5) amend section 44(6) for consistency with the other changes to the section by including references to service providers. The clause also renumbers the paragraphs.

Amendment of s 43 (Obligations of manufacturers, importers and suppliers of substances for use at mines)

Clause 59 amends section 43 to insert a requirement through section 43(2)(aa) that if a manufacturer, importer or supplier of a substance becomes aware of hazard or a defect associated with substance, that may create an unacceptable level of risk to users of the substance, to inform the chief inspector, of the nature of the hazard or defect and its significance, and any modifications or controls of which the manufacturer, importer or supplier is aware that have been developed to eliminate or correct the hazard or defect or manage the risk. The clause also requires the manufacturer, importer or supplier to inform the chief inspector of the name of each mine operator, contractor or service provider the substance was supplied to and what steps have been taken to notify them of the hazard or defect associated with substance. Subclauses (2) and (3) renumbers applicable paragraphs. Subclause (4) inserts a new section 43(4), based on section 41(6), to place an obligation on a supplier of a substance to notify the operator, contractor or service provider of any defect in the use of the substance and any corrective actions to address the hazard or defect.

Replacement of s 44 (Obligation of provider of services at mines)

Clause 60 Insert a new section 44 to complement the amendments to sections 39 and 40 to provide further guidance about the obligations of service providers and how the service provider is to work with the SSE to ensure the service provider's safety and health management plan is integrated with the mine's single SHMS.

Insertion of new pt 3, div 3A

Clause 61 inserts a new section 44A (within a new division 3A *Obligations of officers of corporations*) to support the changes made to section 30. New section 44A casts a positive duty on officers (as defined in the schedule 3 *Dictionary*) of a corporation that has an obligation under the MQSHA to exercise 'due diligence' to ensure that the corporation complies with any obligation under the MQSHA. Section 44A(2) clarifies that an officer may be convicted or found guilty of an offence relating to an obligation of the officer whether or not the corporation was convicted or found guilty of an offence under the MQSHA.

These provisions reflect a policy shift away from deeming that an officer also commits an offence if a corporation commits an offence against the MQSHA, to officers having a positive obligation to exercise due diligence. The positive obligation requires officers to be proactive and means that officers owe a continuous obligation to ensure compliance with obligations under the MQSHA. There is no need to tie an officer's failure to any failure or breach of the relevant corporation, for the officer to be prosecuted under this clause. Importantly, this change helps to clarify the steps that an officer must take to comply with the obligations under this section.

Section 44A(3) contains a non-exhaustive list of reasonable steps an officer must take to discharge their obligations under this section, including acquiring and keeping up-to-date knowledge of mine safety and health matters and ensuring the

corporation has, and implements, processes for complying with any obligations the corporation has under the MQSHA.

An officer must have high yet attainable standards of due diligence. These standards should relate to the position and influence of the officer within the corporation. What is required of an officer should be directly related to the influential nature of their position. This is because the officer governs the corporation and makes decisions for management. A high standard requires persistent examination and care to ensure that the resources and systems of the corporation are adequate to comply with the obligations required of a corporation. Where the officer relies on the expertise of a manager or other person, that expertise must be verified and the reliance must be reasonable. Section 44A(4) clarifies that the obligations on officers of a corporation under the new section 44A do not apply to the SSE or persons reporting to the SSE. The reason for this clarification is that the SSE and other statutory positions already have their obligations specified in detail under the MQSHA.

Amendment of s 45 (Defences for div 2 or 3)

Clause 62 amends the heading and subsection (1) of section 45 to align with the insertion of officer obligations at section 30 and new division 3A *Obligations of officers of corporations*.

Amendment of s 49 (Appointment of site senior executive)

Clause 63 amends section 49 to clarify that for a mine with more than 10 workers or a mine prescribed by regulation, an operator cannot appoint a site senior executive for a mine, or separate part of a mine, unless the person holds a SSE notice. The clause also renumbers applicable paragraphs.

Amendment of s 50 (Management structure for safe operations at mines)

Clause 64 amends section 50 by inserting the requirement to provide that the management structure for safe operations at a mine is to include the name of the person who is responsible for managing the system of work for contractors and providers of services at the mine.

Insertion of new ss 54A and 54B

Clause 65 inserts new sections 54A and 54B to enhance the qualification requirements for the safety critical role of ventilation officer for an underground mine.

Ventilation officers are of critical importance to the occupational health and safety of workers. The atmosphere that is breathed in can be reduced to sub-standard or dangerous conditions of contaminants produced if the course of operations are not controlled, safely extracted or diluted to harmless levels.

Safety standards are over time being eroded due to persons being appointed ventilation officer positions who do not adequately comprehend the task at hand. A ventilation management process cannot be managed effectively without

comprehending the process. Compliance activities have highlighted the ongoing deficiencies in the competency and training of ventilation officers. Attempts to manage this under the current framework have not been successful.

The new section 54A sets up a framework for a ventilation officer to be appointed by the SSE for underground mines based on the number of workers (unless prescribed under the regulation). The section also sets up the role of the ventilation officer.

The clause also inserts a new section 54B to deal with the temporary absence of a ventilation officer appointed for a mine. Sections 54B(2) and (3) provide that where the period of absence is 14 days or less, the duties and responsibilities of the ventilation officer are taken to be assumed by the underground mine manager whether or not the underground mine manager satisfies the requirements under section 54A(3)(a) or (b). Section 54B(4) provides that an inspector may require an underground mine manager, who is assuming the duties and responsibilities of the ventilation officer, to demonstrate they can effectively carry out the duties and responsibilities of both roles while the ventilation officer is temporarily absent. If the inspector is not satisfied the underground mine manager meets the requirements under section 54A(3)(a) or (b), then a person who does satisfy those requirements must be appointed for the remaining period of absence. Where the period of absence of the appointed ventilation officer is more than 14 days, sections 54B(5) and (6) require the SSE to appoint another person who satisfies the requirements under section 54A(3)(a) or (b) as ventilation officer for the mine.

Amendment of s 55 (Safety and health management system)

Clause 66 amends section 55 to clarify that there is to be a single SHMS for a mine. This clarification is consistent with the existing section 39(c) which requires the SSE 'to develop and implement a single SHMS for all persons at the mine'. Subclause (1) inserts new sections 55(2A) and (2B) which clarify that the SHMS is to apply for the management of all aspects of risks affecting safety and health in relation to the operation of the mine, and that the SHMS must be in place prior to commencing operations. This clarification also supports changes made in relation to contractor and service provider management. The clause also renumbers applicable paragraphs.

Amendment of s 69 (Membership of committee)

Clause 67 amends section 69(1) to increase the overall number of members of the mining safety and health advisory committee (the committee) from nine to 10 members. The committee currently consists of nine members, one of whom is the chairperson. The chairperson of the committee is the Commissioner for Mine Safety and Health. Other than the Commissioner, the committee has three members representing industry workers, three representing mine operators and two members from the mines inspectorate (as specified under section 71(3)). Historically, the person appointed to the Commissioner role was also a departmental employee, effectively meaning equal tripartite representation across the committee. With the appointment of an independent Commissioner in 2016, there is no longer an equal number of departmental representatives compared with mine operator and worker representatives on the committees. The objective is to increase the number of departmental (mines inspectorate) members of the committee from two to three

members, which will bring the total number of members on each committee to 10 persons (including the Commissioner).

Amendment of s 71 (Appointment of members)

Clause 68 amends section 71 to separate out the appointment of members from panels (i.e. those nominated by mine operator and work representative organisations) from inspector appointments which do not go through a panel process (both of which were dealt with under the former section 71). Subclauses (1), (2), and (4) make amendments to remove the inspector related content of the heading and within the provision. Note that inspector appointments are addressed under a new section 71A.

Subclause (3) amends section 71(5) to provide the Minister discretionary power to appoint a person from a panel even if the person does not have the required 'operations' experience (which has a defined meaning under the MQSHA). While this experience is highly regarded, at times proposed representatives for appointment will not be able to meet the experiential requirement. This has particularly been an issue for worker representatives proposed for appointment.

Insertion of new s 71A

Clause 69 inserts new section 71A to provide that the chief inspector is automatically a member of the committee and that the Minister must appoint two additional inspectors as members. In practice, the chief inspector is always appointed as a member of the committee. The need for this amendment has arisen because all persons currently appointed as members of the committee under the MQSHA are appointed as individuals, rather than by position. The current approach is administratively burdensome in relation to departmental employees (i.e. inspectors) in the event of resignations or extended periods of absence and is inconsistent the recommendations of the "Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities" that appointments be by position where possible.

This practice is permissible under section 24A of the *Acts Interpretation Act 1954*, which provides that appointments may be made by the title of an office and that the appointee is taken to be the person occupying or acting in the office. The appointment of public service officer holder positions, as opposed to individuals by name, removes the requirement for the appointee to tender a resignation upon ceasing employment with the public service or leaving the relevant position. The new section 71A(1) overcomes this by providing that the chief inspector is automatically a member of the committee.

Amendment of s 130 (Entry to places)

Clause 70 amends section 130 to provide for entry at any time by an officer into any place that is, or the inspector reasonably suspects is, a workplace. Subclause (2) clarifies that section 130(2) relates to asking the occupier for consent to enter under section 130(1)(a). Subclause (3) replaces section 130(3) to clarify that consent from the person with management or control of the workplace is not required to affect entry under section 130(1)(e).

Insertion of new s 135A

Clause 71 includes a new section 135A which places limitations on entry powers of inspectors to places where the place may also be used for residential purposes.

Amendment of s 180 (Functions of the board of examiners)

Clause 72 amends section 180 regarding functions of the Board of Examiners. A new section 180(e) is inserted to include the issuing of site senior executive notices to persons who have demonstrated safety and health competencies to the Board of Examiners' satisfaction and inserts section 180(f) about performance of other functions of the Board of Examiners.

Insertion of new s 181A

Clause 73 inserts a new section 181A to clarify that the Board of Examiners, among other things, is to have regard to previous suspension or cancellation of a certificate of competency or site senior executive notice in deciding whether to grant a certificate or notice to an applicant for or previous holder of a suspended or cancelled certificate or notice in the future.

Amendment of s 182 (Obtaining certificates of competency by fraud)

Clause 74 amends sections 182(1) and (2) to include references to SSE notices. The clause also inserts a new section 182(3) to provide that the Board of Examiners must give notice of a decision to cancel a certificate of competency or SSE notice obtained fraudulently.

Amendment of s 183 (Return of certificate of competency)

Clause 75 amends section 183 to include an SSE notice must be returned to the Board of Examiners when suspended or cancelled. The clause also includes the return of a certificate or notice where the chief executive has made a decision to suspend or cancel a certificate or notice.

Insertion of new ss 184 and 185

Clause 76 inserts new sections 184 and 185. New section 184 clarifies that the appointment of a person, which is reliant on the person holding either a certificate of competency or SSE notice, ends on the suspension or cancellation of the certificate or notice.

New section 185 requires the Board of Examiners to keep a register of certificates of competency, site senior executive notices (SSE notices) and notices of registration under mutual recognition arrangements. The amendment clarifies current difficulties and uncertainties about releasing information about whether a person is the holder of a certificate of competency, SSE notice, or notice of registration. As this is considered personal information, issues have arisen through right to information and other processes, as there is currently no legislative provision to facilitate the effective release of this information.

Currently, any agency, mine operator or other person wanting to confirm that a person is the holder of a valid certificate, SSE notice or notice of registration requires either the consent of the holder or alternatively may request access to the information under the *Right to Information Act 2009*. The current approach is not only administratively burdensome, particularly for employers seeking to confirm the qualifications of candidates for safety critical roles; it also detracts from promoting transparency in the mining industry.

While other agencies provide public access to such information (e.g. online electrical licence holder search), there is currently no provision under Queensland's mining safety laws for similar disclosure of a person's mining competency status.

New section 185 addresses the identified transparency issues surrounding the mining competency status of persons by requiring the Board of Examiners keep a register in relation to certificates of competency, SSE notices and notices of registration.

Section 185(2) specifies the information that must be included in the register including the holder's name, contact details, details and status of the certificate or notice, and any other information prescribed under a regulation. Section 185(3) provides for the disclosure of information contained in the register, other than a person's contact details, to any person or agency. Section 185(4) provides the meaning of *mutual recognition Act* for the section.

Insertion of new pt 10A

Clause 77 inserts a new part 10A containing sections 186 to 189 to clarify the grounds for suspension or cancellation of a certificate of competency and the procedure required of the chief executive in providing a notice of proposed action and the details to be included in that notice. The chief executive will consider all written submissions made within the required time and must inform the person of the decision by notice. If the decision is to suspend or cancel the certificate of competency the notice must state the decision and reasons for it and that the person may appeal and provide the appeal process.

Amendment of s 195 (Notice of accidents, incidents, deaths or diseases)

Clause 78 amends section 195. Subclause (1) makes minor wording changes to clarify the provision according to current drafting practice. Subclause (2) inserts a new section 195(7) to place an obligation on a person prescribed under a regulation to give notice when the person becomes aware of a mine worker being diagnosed with a reportable disease. The intent of this provision is to extend the reportable disease notification requirement from the SSE to also including other persons that would be in a position to make a notification (e.g. a medical practitioner making the diagnosis of a reportable disease). Subclause (2) also inserts a new section 195(8) which provides the definition for reportable diseases to be prescribed by regulation.

Amendment of pt 13, div 1, hdg (Appeals against particular decisions of Minister or board of examiners)

Clause 79 amends the heading for part 13, division 1 to include the chief executive.

Insertion of new s 216A

Clause 80 inserts new section 216A to introduce appeal rights to the Industrial Magistrates Court against the chief executive's decision notice about whether a person's certificate of competency or SSE notice is suspended or cancelled, or for imposing a civil penalty.

Amendment of s 218 (How to start appeal)

Clause 81 amends section 218 to include the chief executive's decision in relation to serving a notice of appeal. The clause also renumbers applicable paragraphs.

Amendment of s 220 (Hearing procedures)

Clause 82 amends section 220 to insert a new section 220(2A) which does not allow for new information to be taken into account that was not available to the chief executive in making a decision when an appeal against a decision of the chief executive is being decided. Subclause (2) amends the definition of 'original decision-maker' to include the chief executive. Subclause (3) renumbers applicable paragraphs

Amendment of s 231 (Evidentiary aids)

Clause 83 amends section 231(1)(b) to also apply for notices.

Amendment of s 237 (Court may order suspension or cancellation of certificate)

Clause 84 amends section 237 to also apply to SSE notices in addition to certificates of competency. Subclause (3) inserts a new section 237(4) to require the industrial magistrate to give notice of suspension or cancellation of a certificate to the relevant SSE (where the person with the cancelled certificate works), or give notice of cancellation of a SSE notice to the relevant mine operator.

Amendment of s 240 (Responsibility for acts or omissions of representatives)

Clause 85 amends section 240 to replace references to 'reasonable diligence' with 'reasonable precautions and proper diligence'. Subclause (2) amends the definition of *representative* to replace the reference to 'executive officer' with 'officer' to align with changes to officer obligations.

Omission of s 241 (Executive officers must ensure corporation complies with Act)

Clause 86 omits section 241 as a consequence of the introduction of changes to officer obligations made by the insertion of new Part 3A *Obligations of officers of corporations*.

Insertion of new pt 14B

Clause 87 inserts a new part 14B dealing with civil penalties. The new section 246E defines the civil penalty obligations, corresponding offence, penalty notice, proposed penalty notice and relevant corporation. The new section 246F provides that a relevant corporations who is a mine operator or contractor will be liable for a civil penalty where the relevant corporation contravenes a civil penalty obligation; or a representative of the relevant corporation contravenes a civil penalty obligation. Section 246F provides for 3 categories of civil penalties: 1000 penalty units for category 1, 750 penalty units for category 2 and 500 penalty units for category 3.

The new section 246G provides for a notice to be given where the chief executive believes a relevant corporation is liable to a civil penalty. The section also contains information of the details that must be included in the proposed penalty notice. Where a corporation is given a notice they will have within 14 days, or a date later specified, to respond. The new section 246H provides for a relevant corporations submission to be made.

The new section 246H provides that the relevant corporation, within the period stated in the notice, make a submission to the chief executive about why the civil penalty should not be imposed.

The new section 246I provides for the chief executive to give a penalty notice where the chief executive is satisfied a civil penalty obligation has been contravened and the relevant corporation is liable to a civil penalty on the grounds of the contravention. The section provides for the detail in the penalty notice. The section also provides that the person may appeal the decision to the Industrial Magistrates Court. The State may recover the penalty from the corporation as a debt.

The new section 246J provides when a civil penalty cannot be imposed after criminal proceedings.

The new section 246K provides that a criminal proceeding may be started against a relevant corporation for a corresponding offence for a contravention of a civil penalty obligation regardless of whether a civil penalty has been imposed on the corporation for the contravention.

Amendment of s 254C (Public statements)

Clause 88 amends section 254C to broaden the matters about which information may be released and clarifies matters of liability. The proactive release of safety information by regulators (e.g. safety alerts about incidents) enables industry to implement key learnings in a timely manner. While the former section 254C does provide for making

and issuing public statements; the provision is limited compared to other regulators (e.g. NSW), which have specific provisions intended to facilitate early information flow from regulators after an incident while protecting the regulator from any proceedings against it for the release of the information. The aim of this being that industry will learn from the information and be encouraged to improve in relation to safety and health management and prevention strategies.

Subclauses (1), (2), (3) and (4) amend section 254C(1) to enable information to be released about accidents (including serious accidents) and high potential incidents as well as any incident or other matter that may be relevant for a person's compliance with safety and health obligations. These subclauses also broaden the range of information that may be released at section 254C(1) to align with changes made by the Bill in relation to the suspension or cancellation of a certificate of competency or SSE notice under the new Part 10A.

Subclause (5) inserts sections 254C(4), (5) and (6) to provide that no liability is incurred, including in defamation, by the State or a person publishing the information included in a public statement where the action is done in good faith. The improvements to section 254C will facilitate the early information flow from regulators after an incident; improve consistency with NSW provisions; and provide appropriate protection for the Minister, chief executive, commissioner and chief inspector from any potential proceedings against them for the release of the information (e.g. defamation).

Amendment of s 255 (Disclosure of information)

Clause 89 amends section 255 to provide that the chief inspector or chief executive may disclose to the Regulator or Work Cover, under the *Workers' Compensation and Rehabilitation Act 2003*, any information that the chief inspector or chief executive has that relates to the matter under the Act. The disclosure of personal information is necessary for the effective operation of the *Workers' Compensation and Rehabilitation Act 2003*.

Amendment of s 262 (Regulation-making power)

Clause 90 amends section 262 to include continuing professional development requirements, as decided by the Board of Examiners, for holders of certificates of competency and SSE notices as a matter that may be addressed under a regulation. This will clarify and confirm that the functions of the Board of Examiners are not limited to deciding only the competencies necessary to hold a certificate of competency, but also extend to deciding matters pertaining to continuing professional development of certificate of competency and SSE notice holders (e.g. competencies necessary to hold a practising certificate). This change aligns with the functions of the equivalent NSW Board of examiners, which are broadly stated (under NSW legislation) and which facilitate both the certificate of competency and the practising certificate schemes.

Subclause (2) introduces a new section 262(2)(m) that deals with matters pertaining to the health of persons who have been employed at a mine. This will allow the regulation to address matters relating to persons previously employed at a mine (e.g. retired mine workers).

Insertion of new pt 20, div 5

Clause 91 inserts new division 5 Transitional provisions for *Mines Legislation (Resources Safety) Amendment Act 2017* into part 20.

Section 282 defines the term *amended* for the purpose of the section.

Section 283 provides a 12 month transitional timeframe for the application section 49(4), or for a further 12 month period if extended by the chief inspector.

Section 284 provides that amended sections 54A(3) or 54B(6) prohibiting SSE's from appointing a person as ventilation officer, or acting ventilation officer, for an underground mine does not apply during the transitional period (which ceases 3 years from the date of commencement).

Section 285 (*Continuation of exemptions for particular opal or gem mines*) provides transitional period of two years in relation to safety and health management system and contractor and service provider management requirements for small opal and gem mines.

Amendment of sch 2 (Dictionary)

Clause 92 amends the dictionary at schedule 2. Subclause (1) omits the definitions of executive officer, officer, opal or gem mine, SHMS and supplier. Subclause (2) inserts new definitions in schedule 3 for civil penalty obligation, corresponding offence, officer, penalty notice, proposed action, proposed action notice, proposed penalty notice, relevant corporation, safety and health management system, service provider, site senior executive notices, supplier and workplace. Subclause (3) amends the definition of worker to also include a service provider or employee of a service provider.

Part 4 Amendment of other legislation

Division 1 Amendment of Coal Mining Safety and Health Regulation 2017

Regulation amended

Clause 93 states that part 4 amends the Coal Mining Safety and Health Regulation 2017 (the CMSHR).

Insertion of new s 371A

Clause 94 inserts a new section 371A dealing with civil penalties for sections 267E and 267F of the CMSHA.

Insertion of new sch 7A

Clause 95 inserts a new schedule 7A dealing with civil penalties in relation to section 371A of the CMSHA. The schedule outlines obligations to which civil penalties apply and identifies the associated category in relation to an obligation.

Amendment of sch 8 (Fees)

Clause 96 amends schedule 8, part 1, to insert a new fee at item 2A for an application for assessment for a ventilation officer's certificate of competency. The clause also renumbers items 2A and 3.

Division 2 Amendment of Mining and Quarrying Safety and Health Regulation 2017

Regulation amended

Clause 97 states that part 4 amends the Mining and Quarrying Safety and Health Regulation 2017 (the MQSHR).

Insertion of new s 150A

Clause 98 inserts a new section 150A dealing with civil penalties for sections 246E and 246F of the MQSHA.

Insertion of new sch 5A

Clause 99 inserts a new schedule 5A dealing with civil penalties in relation to section 150A of the MQSHA. The schedule outlines obligations to which civil penalties apply and identifies the associated category in relation to an obligation.

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