Resources Safety & Health
Queensland

# Facilitating High Reliability Organisation behaviours in Queensland's Resources Sector and Modernising Regulatory Enforcement

Decision Regulatory Impact Statement

2023

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# Acronyms and glossary

| Acronym/term | Description |
|---|---|
| BoE | Refers to the Board of Examiners established under the CMSHA, section 184 |
| BoI | Queensland Coal Mining Board of Inquiry |
| BoI Report | Refers collectively to the Queensland Coal Mining Board of Inquiry reports delivered in two parts (Part I provided on 30 November 2020 and Part II provided on 31 May 2021) |
| Brady Review | A review of all fatal accidents in Queensland mines and quarries from 2000 to 2019 by forensic structural engineer Dr Sean Brady |
| CEO | Chief Executive Officer of RSHQ |
| CPD | Continuing professional development |
| CMSHA | *Coal Mining Safety and Health Act 1999* |
| CMSHR | Coal Mining Safety and Health Regulation 2017 |
| CRIS | Consultation Regulatory Impact Statement |
| CCM | Critical control management |
| DNRME | This refers to the former Department of Natural Resources, Mines and Energy; and any predecessors as a result of machinery of government changes |
| DoR | Department of Resources |
| Directive/Directives | Refers collectively to directives, remedial action notices and compliance directions under the Resources Safety Acts |
| DRIS | Decision Regulatory Impact Statement |
| DWR | District workers' representative |
| Explosives Act | *Explosives Act 1999* |
| GDAA/GDAAs | Gas device approval authority/gas device approval authorities |
| HPI/HPIs | High potential incident/high potential incidents |
| HR Act | *Human Rights Act 2019* |
| HRO/HROs/HRO theory | High Reliability Organisation/High Reliability Organisations/High Reliability Organisational theory |
| ICMM | International Council of Mining and Metals |
| ISHR/ISHRs | Industry safety and health representative/industry safety and health representatives |
| LTI/LTIs/LTIFR | Lost time injury/lost time injuries/lost time injury frequency rate |
| Mining Safety Acts | This refers to both the CMSHA and the MQSHA |
| Mining Safety laws | Refers collectively to the CMSHA, the CMSHR, the MQSHA and the MQSHR |
| Minister | Refers, in the context of the Resources Safety Acts, to the Minister for Resources |
| MQSHA | *Mining and Quarrying Safety and Health Act 1999* |
| MQSHR | Mining and Quarrying Safety and Health Regulation 2017 |

| | |
|---|---|
| PG Act | *Petroleum and Gas (Production and Safety) Act 2004* |
| PG Reg | Petroleum and Gas (Safety) Regulation 2018 |
| Resources Safety Acts | Refers collectively to the CMSHA, the Explosives Act, the MQSHA and the PG Act; and where the context permits, includes the RSHQ Act |
| ROC/ROCs | Remote operating centre/Remote operating centres |
| RSHQ/the regulator | Resources Safety and Health Queensland |
| RSHQ Act | *Resources Safety and Health Queensland Act 2020* |
| RTO/RTOs | Registered training organisation/registered training organisations |
| SHMS | Safety and health management system |
| SSE/SSEs | Site senior executive/site senior executives |
| SSHC/SSHCs | Site safety and health committee/site safety and health committees |
| SSHR/SSHRs | Site safety and health representative/site safety and health representatives |
| UMM/UMMs | Underground mine manager/underground mine managers |
| WHS | Work health and safety |
| WHSA | Refers generally to the Queensland *Work Health and Safety Act 2011* unless otherwise stated |

# Executive summary

The Queensland Government is committed to achieving a strong resources sector. Resources industries – mining, quarrying, explosives and petroleum and gas – are key drivers of the Queensland economy, creating jobs and delivering a range of broader benefits for the State.

Since 2000 there have been 55 fatalities in the mining and quarrying industry alone. If we maintain the status quo, history indicates that there will likely be in the order of 12 fatalities over any five-year period. This is unacceptable. Improving the sector's safety and health performance to reduce the occurrence of fatalities and serious accidents is a Queensland Government priority.

A changed approach and adjustments to the safety framework for the resources sector is required to improve the safety and health of workers. Independent reviews in relation to safety and health in the resources sector have been undertaken including:

- a review of all fatal accidents in Queensland mines and quarries from 2000 to 2019 by forensic structural engineer Dr Sean Brady (Brady Review)
- a Board of Inquiry into coal mining safety incidents as a result of a serious accident at Grosvenor mine where five coal mine workers were seriously injured, along with 40 methane exceedances at Grosvenor and other mines.

The Brady Review found that a large number of the fatalities during the review period involved inadequate training of workers; controls meant to prevent harm were ineffective, unenforced or absent with no, or inadequate, supervision. Dr Brady found almost all of the fatalities were the result of systemic, organisation and supervision of training failures. Human error alone would not have caused these fatalities. Key recommendations of the Brady review included:

- that a change in approach is required to how industry identifies and controls hazards, as well as how it recognises when these controls are eroding or ineffective.
- that the principles of High Reliability Organisation theory (HRO theory) should be adopted by the resources sector. This involves organisations focusing on identifying incidents that are precursors to larger fatalities and then using this information to identify and act on existing hazards to remove them.

The Board of Inquiry made a number of findings and recommendations to improve safety and health and supported critical control management as a risk management process, focusing on identifying and managing the controls that are critical to the prevention of catastrophic events. It suggested a pathway for implementation of critical controls as a means of moving industry towards adopting HRO theory.

The Government has developed a comprehensive preventative and proactive package of regulatory safety reforms for the Resources Safety Acts[1] to reduce the rates of serious accidents and fatalities and support the Queensland resources sector in implementing approaches consistent with HRO theory. These include responding to findings of independent reviews. This package of reforms is detailed in Table 3. It includes legislative amendments designed to:

- Facilitate the growth in HRO behaviours
- Modernise regulatory enforcement powers
- Implement a more contemporary legislative framework
- Ensure consistency across the Resources Safety Acts.

Two alternative proposals were developed for comparison and to facilitate discussion. One of these options proposed continuing with the existing regulatory framework and, whilst this option is cost neutral, it will not lead to any further safety and health improvements or to a reduction of fatalities and incidents.

The other option proposed that the regulator conducts a broad educational program focusing on HRO principles and practices. Without legislative changes to support this approach, this option alone seems unlikely to achieve the objectives of government action.

A Consultation Regulatory Impact Statement (CRIS) was developed to allow these options to be critically assessed via public consultation. The CRIS was publicly available from 23 September 2022 until 21 November 2022 and 34 submissions were received. Appendix 1 lists the stakeholders who responded to the CRIS. Appendix 2 contains several tables summarising their responses. For each proposal, the tables group the stakeholders into types and lists whether they expressed support (either completely, partially, or in-principle), expressed no support, or otherwise gave a response that was unclear or offered an alternative proposal. Appendix 3 lists the consultation questions that were posed in the CRIS. The Queensland Government have

[1] *Coal Mining Safety and Health Act 1999* (CMSHA), the *Mining and Quarrying Safety and Health Act 1999* (MQSHA), the *Explosives Act 1999* (Explosives Act) and the safety related aspects of the *Petroleum and Gas (Production and Safety) Act 2004* (PG Act).

considered the impact of the proposals based on this feedback and have developed this DRIS in response.

A transitional phase for industry to adjust to relevant changes will also be considered.

## The purpose of this Decision Regulatory Impact Statement

This DRIS has been prepared by RSHQ to provide an overview of the feedback contributed during the consultation phase. The purpose of this statement is to summarise the key messages and issues submitted by stakeholders in response to the CRIS. The DRIS identifies the proposed changes suggested by stakeholders to the regulatory options in the CRIS and makes recommendations as to whether the proposed changes should be adopted.

Stakeholders also raised some operational matters that were out of scope of the proposed legislative amendments, these matters have been referred to the appropriate areas for consideration. For instance, suggestions regarding the administration of the practising certificate scheme have been referred to the BoI, comments on the data system have been referred to the relevant area of RSHQ while the suggestion of the BoE auditing RTOs cannot be taken up as RTO's are regulated under Federal Government legislation by the Australian Skills Quality Authority. Some new legislative proposals raised by stakeholders such as expanding the ISHR powers and broader directive powers were also out of scope of this consultation process.

To assist in the final decision-making process the cost/benefit analysis tables have also been reviewed and amended where necessary to ensure that the primary costs and benefits of the final proposals have been accurately captured.

Subject to Cabinet approval, a consultation Bill will be drafted by the Office of the Queensland Parliamentary Counsel. Further consultation will be undertaken at this stage to provide stakeholders with the proposed detailed legislative provisions and stakeholders comments will be considered as to whether any final refining to the details of the legislative amendments are needed. The below table indicates the outcome of consultation for each of the proposals.

| Proposal in CRIS | Outcome of consultation |
|---|---|
| Introducing critical control management | The majority of stakeholders supported the intent of this proposal. Clarification was sought on the details for reporting of critical controls and suspension of operations which has been addressed in the DRIS. The specific details of the legislative provisions will be available in a consultation draft Bill. Proceed with option 1. |
| Competency for key critical safety roles | Certificates of competency will be required for surface mine managers, surface electrical engineering managers, surface mechanical engineering managers, underground electrical engineering managers, and underground mechanical engineering managers. Underground SSEs will be required to hold a First Class UMM certificate of competency. Surface coal mine SSEs will be required to hold a surface mine manager certificate of competency.<br>The transitional period has been extended to 5 years.<br>Proceed with option 1. |
| Continuing professional development | Stakeholders were generally very supportive of a compliance framework for CPD. Proceed with option 1. |
| Establish site safety and health committee | This proposal was not generally supported by stakeholders, in particular, industry stakeholders. Industry felt that this safety reporting framework already exists where needed, and further prescription was not required. The SSHC is an important safety mechanism which already exists in the MQSHA. Existing safety frameworks can be incorporated into an SSHC if required, noting that an SSHC need only be established on request of an SSHR or under direction of a chief inspector. Therefore it has been decided to proceed with Option 1, to establish an SSHC in the CMSHA. |
| Improved data and incident reporting | This proposal was generally supported with some stakeholders wanting more details (which will be provided in the consultation Bill). Some suggestions regarding broadening the scope of notification provisions to include notification to additional entities such as the ISHRs were made by stakeholders which are out of scope of these policy reforms. Proceed with option 1. |
| Information sharing to improve safety | Reasonable support was received for this proposal, with stakeholders raising the legislative approach taken in NSW as a preference. As a result, a similar approach to NSW will be adopted with the focus on sharing information rather than the release of a public statement. Notification requirements prior to the sharing of information will be added into the consultation draft Bill. The remainder of option 1 will proceed as proposed. |
| Enforceable undertakings | Stakeholders were largely supportive and sought operational details of this proposal. There will be an operational guideline which will underpin this legislative proposal. Proceed with option 1. |
| Court order provisions | There was majority support for this proposal, and queries raised by stakeholders have been addressed in the body of the DRIS. Proceed with option 1. |
| Directives | Proceed with option 1 with the inclusion of added protection against the use of incriminating evidence in expert reports and appeal rights as suggested by stakeholders. |

| Proposal in CRIS | Outcome of consultation |
|---|---|
| Definition of labour hire agencies | There was support for the intent of the proposal. Some stakeholders expressed concern about the possible consequences of altering the definition as proposed. Stakeholders will be able to comment on the specific detail of the altered definition in the consultation draft Bill. Proceed with option 1. |
| Industrial manslaughter | Some stakeholders were concerned with the industrial manslaughter offence itself. There is no government imperative to remove this existing offence provision. Proceed with option 1. |
| Remote operating centres | Some stakeholders expressed support for the proposal, whilst there were a number of submissions that indicated the need for further clarity on the proposal. Considering all of the feedback generally, the proposal for clarifying safety and health obligations of ROC workers will proceed for both CMSHA and MQSHA. |
| Safety critical roles to be located on-site | This is a new proposal in response to stakeholder feedback that indicated strong support for this initiative in coal mines, mineral mines and quarries. Some stakeholders were concerned with the detail of such a proposal and will be able to consider this further in the consultation draft Bill. |
| Contemporary board of examiners | Majority support for this proposal, proceed with option 1. |
| Court jurisdiction for prosecution | A few stakeholders expressed concern with replacing the industrial court with the magistrates court. However the arguments against were not compelling. Proceed with option 1. |
| Commencement of offence proceedings | No compelling arguments were received for limiting the timeframe for complex investigations to one year, proceed with option 1. |
| Protection from reprisals | Majority support for this proposal, proceed with option 1. |
| Consistent board of inquiry offence provisions | Proceed with option 1. |
| Consistent penalties for obstruction of inspectors, officers or representatives | Proceed with option 1. |
| Consistent penalties for failing to provide help to SSHC representatives and committees. | Proceed with option 1. |
| Operational amendments | Proceed with option 1 with some minor amendments to the biogas limited capacity system proposal. |

| Proposal in CRIS | Outcome of consultation |
|---|---|
| University of Queensland review and other minor amendments | Final proposals remain largely unchanged except for the proposal regarding the notification of diseases. These minor changes which include changes from stakeholders will be consulted on through the consultation Bill. |

The Queensland Government Guide to Better Regulation (the guidelines) requires that proposals with significant impacts should be subject to a regulatory impact statement, with a higher standard of impact assessment, including cost-benefit analysis (as per page 16 of the guidelines). This has been applied to the proposal on the competency for key critical safety roles.

# Introduction

The Queensland Government is reviewing its resources safety and health laws, namely the *Coal Mining Safety and Health Act 1999* (CMSHA), the *Mining and Quarrying Safety and Health Act 1999* (MQSHA), the *Explosives Act 1999* (Explosives Act) and the safety related aspects of the *Petroleum and Gas (Production and Safety) Act 2004* (PG Act).

The vision of Resources Safety and Health Queensland (RSHQ) is zero serious harm across the state's resources sector. Our mission is to regulate, educate and assist industry in meeting its obligations to protect and promote the safety and health of persons from risks associated with mining, quarrying, explosives and petroleum and gas. The safety and health of workers is protected by ensuring that the risk of injury or illness from regulated activities is at an acceptable level and that obligation-holders receive the support, guidance and information necessary to discharge their safety and health obligations. RSHQ issues safety alerts, safety bulletins and industry performance reporting, as well as other hazard and risk related materials to share safety information and learnings with industry. RSHQ also conducts inspections, audits and investigations as part of its risk-based compliance and enforcement program.

## *Why are we reviewing these laws?*

The Queensland Government is committed to achieving a strong resources sector. The resources industry is a key driver of the Queensland economy, creating jobs and delivering a range of broader benefits for the state. In 2020-21 the resource industry contributed $27.5 billion to Queensland's Gross State Product.[2] A strong resources sector depends on its industries having safe and healthy workplaces.

## *Employment in the resources sector*

The resources sector can be divided into the following sub-sectors: coal and mineral mines; quarries; explosives; and petroleum and gas. Coal and mineral mines employ most resources sector workers, with just over 36,000 employed in coal mines and approximately 14,000 in mineral mines. Quarry workers account for almost 1,500 employees.[3]

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[2] Department of Resources, *Queensland Resources Industry Development Plan*, June 2022, available at https://www.resources.qld.gov.au/__data/assets/pdf_file/0005/1626647/qridp-web.pdf.

[3] Internally sourced data, publicly available at https://www.data.qld.gov.au/dataset/quarterly-mines-and-quarries-safety-statistics-data/resource/9722bfd4-9618-4b52-95de-e7c8f03cfd6b.

The mining and quarry sector can be broken down into more specific areas of operation with operator numbers at 31 December 2021 as shown in Table 1.

*Table 1 – Mining and quarry sector operator numbers*

| Sector | Operator numbers |
|---|---|
| Coal (exploration) | 236 |
| Coal (surface) | 63 |
| Coal (underground) | 14 |
| Metalliferous (exploration) | 251 |
| Metalliferous (surface) | 1,015 |
| Metalliferous (other) | 19 |
| Metalliferous (underground) | 82 |
| Quarries | 349 |

In the explosives industry, the number of workers is estimated to be around 1,500 as at 31 December 2021.[4]

For the petroleum and gas industry, RSHQ regulates the safety and health of 358 petroleum and gas entities which range in size from petroleum production companies with thousands of wells, gas pipeline companies, and local hardware stores that supply LPG gas. The regulator also has a role in authorising gas workers, engineers and entities that approve gas devices.

### *Brady Review*

In the review of all fatal accidents in Queensland mines and quarries from 1 January 2000 to 31 July 2019 (the Brady Review)[5]; Dr Sean Brady, forensic structural engineer, reviewed and analysed fatality and serious accident data across this period. This review revealed that a large number of the 47 individual fatalities during this period involved inadequate training of workers; and controls meant to prevent harm were ineffective, unenforced or absent, with no or inadequate supervision. The Brady Review found almost all of the fatalities were the result of systemic, organisation, supervision or training failures, either with or without the presence of human error. Human error alone would not have caused, and should not be accepted, as the

[4] This estimate may exclude explosives workers who are exclusively employed on explosives-related tasks but are working on a mine or quarry site. These workers will be reported to RSHQ instead as coal mines or mineral mines employees on the *Mining and Quarrying Industry Census Form*. This estimate is calculated from the number of full-time and full-time equivalent (FTE) workers reported on the *Explosives and Fireworks Industry Census Form*. Only authority holder companies with 6 or more workers are required to report quarterly, and a worker is classified as a full-time employee if they have worked at least 500 hours during the quarterly reporting period.

[5] Dr Sean Brady, Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019, December 2019, available at https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T197.pdf.

cause of, these fatalities. For instance, the review of each of the 47 individual fatalities revealed:

- 17 of the fatalities involved no human error on the part of the deceased
- 17 of the fatalities involved a lack of task-specific training and/or competencies for the tasks being undertaken. A further nine fatalities involved inadequate training
- In 32 of the 47 fatalities, the worker was required to be supervised when undertaking the tasks and 25 of these involved inadequate or absent supervision
- The majority of the 47 fatalities involved at least one failed or absent control that could potentially have prevented the fatality
- There were 10 incidents involving known faults/issues, where individuals were aware of them, but no action was taken
- Nine fatalities had known near misses occur prior to the fatality
- In some cases, prior fatalities had occurred in a similar manner.

The Brady Review identified an evident pattern over the past 19.5 years which was characterised by periods where a significant number of fatalities occurred, followed by periods where there were few to none. The Brady Review therefore suggests that industry goes through periods of increasing and decreasing vigilance, or that periods of success breed complacency, which can lead to failures and fatalities (referred to as "a drift into failure").

Dr Brady indicated that to remedy this, a change in approach is required to how the industry identifies and controls hazards as well as how it recognises and addresses them when these controls are eroding or ineffective. He went on to recommend that the principles of High Reliability Organisation theory (HRO theory)[6], where organisations focus on identifying incidents that are the precursors to larger failures and then use this information to prevent failures occurring, be adopted by the industry.

These signals provide an opportunity to identify and act on existing hazards in order to remove them and is key in preventing the drift into failure. In order to support industry to operate like high reliability organisations (HROs), Dr Brady recommended that the regulator (RSHQ) play a key role in collation, analysis and dissemination of incident and fatality data collected from industry to inform safety learnings and future direction for safety and health approaches for industry.

The Brady Review also identified under-reporting of safety and health incidents and highlighted the importance of establishing a strong and open reporting culture. Dr Brady recommended that the regulator should develop a simplified incident reporting system that is, easy to use in

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6 Andrew Hopkins, *Learning from high reliability organisations* (Sydney, CCH Australia Limited, 2009).

the field, encourages open reporting and maximises the probability of reporting. A strong reporting culture is a core aspect of HRO theory. Dr Brady considered that this "culture is based upon the organisation's practices, not the attitudes or mindsets of individuals working for the organisation."[7]

| What is HRO theory? |
| --- |
| HRO theory is based on over 20 years of research and practical implementation across organisations that operate in highly complex and hazardous fields, yet consistently maintain strong safety and efficiency records; managing to avoid or minimising catastrophic incidents – for example, air traffic control. HROs are committed to safety at the highest level of the organisation and throughout. One of the five key principles of HRO theory is that organisations should be preoccupied with failure. This means that organisations should have systems and processes that encourage reporting hazards and near misses. There should also be a focus on the failings or errors that have occurred and an assessment of features of the systems in place that may increase the risk of those occurring again.[8] The other key principles focus on:<br><br>• Sensitivity to operations – HROs strive to maintain a high awareness of how work is actually performed at the front line by encouraging operators to report on their experiences; they accept the likelihood of informal practices developing at the front line.<br>• Commitment to resilience – this refers to the understanding that people have of the unpredictability of systems and failures. They are prepared for failures and can respond rapidly and appropriately when they occur by self-organising into expert networks, then revert to normal conditions when problems are solved.[9]<br>• Deference to expertise – HROs understand that the people with the greatest understanding of their role are those actually in the role - not the highest-ranking persons in the organisation. This preferences appropriate expert knowledge over hierarchy in managing risk. It requires conditions where persons can raise safety concerns without fear.<br>• Reluctance to simplify interpretations of issues or risks – HROs understand the complexity of operations and avoid making inappropriate assumptions when approaching management of risk. This means understanding the complexity of daily tasks and the integration of those tasks with other teams.[10] HROs recognise this may require redundancy in expertise, systems and competency, which they do not seek to avoid.[11] |

*A list of the Brady Review recommendations is contained in Attachment 1.*

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7 Dr Sean Brady, Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019, December 2019, available at https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T197.pdf.

8 Karl Weick and H. Roberts, Collective Mind in Organizations: Heedful Interrelating on Flight Decks' (1993), 38(3) *Administrative Science Quarterly*, 357-381.

9 Andrew Hopkins, *Safety, Culture and Risk: The Organisational Causes of Disasters* (CCH, Australia, 2005) 15.

10 KE Weick and KM Sutcliffe, *Managing the unexpected - assuring high performance in an age of complexity* (Jossey-Bass, San Francisco, CA, 2001).

11 Andrew Hopkins, *Safety, Culture and Risk: The Organisational Causes of Disasters* (CCH Australia, 2005).

Note that the review period regarding the 47 fatalities considered as part of the Brady Review was from 1 January 2000 to 31 July 2019. Since then, there have unfortunately been a further five fatalities in Queensland mines,[12] bringing the total to 55 lives lost since 1 January 2000.

### *Safety resets*

In July and August 2019, 1,197 safety reset sessions[13] were held across the state. The safety resets provided an opportunity for all Queensland mine workers to reflect, reset and refocus on safety, as well as have their say on a range of safety issues. Attendees were provided with a package of information under the reset plan open for discussion. More than 52,000 mine and quarry workers joined employer representatives and union representatives attending safety reset sessions and took time to focus on what it means to be a safe industry, free of fatality and serious harm. Attendees had the opportunity to make confidential comments about safety. Anecdotal feedback, based on issues raised from the floor during safety resets was that there was a worker perception that safety concerns could not be raised without fear of reprisal.

Other key issues identified by participants included the importance of leadership in addressing safety issues, the importance of an experienced, well-trained permanent workforce in improving safety, the need for improved quality of training and more frequent training, and the need for improved procedures.

The Minister initiated an industry-wide safety reset in the second half of 2021 which also included workers from the petroleum and gas and explosives sectors. This safety reset focused on the theme of 'chronic unease', (focusing on pre-cursors to incidents and learning from these, a key theme in the Brady Review) and the importance of reporting.

### *Board of Inquiry*

On 22 May 2020 the Honourable Dr Anthony Lynham MP, then Minister for Natural Resources, Mines and Energy, established a board of inquiry to investigate the serious accident on 6 May 2020 at the Anglo American operated Grosvenor mine. This accident involved an ignition of methane and five miners suffered extensive burns to their upper bodies and airways. The Queensland Coal Mining Board of Inquiry (BoI) was required to determine the nature and cause

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[12] Single fatalities occurred in Queensland coal mines on 25 November 2019, 12 January 2020, 14 September 2021, 21 November 2021 and 25 March 2022.

[13] Safety Resets are meetings joined by management, union representatives and workers to re-commit to work collectively toward a Queensland resources industry free of injury and fatality. Thus, resetting the approach towards safety and health in Queensland's mining industries.

of the serious accident, and to examine 40 methane exceedances that occurred between 1 July 2019 and 5 May 2020 at Grosvenor and other identified mines.

The BoI made inquiries into the incidents that would result in findings and recommendations for mine operators, relevant obligation holders and other parties for improving safety and health practices and procedures for mitigating the risk of similar incidents occurring in the future. Considerations were to include the nature of any employment arrangements which may have had an effect on the level of risk workers were exposed to.

Over a 12-month duration, the BoI obtained information through assistance from the community, interviews of people with knowledge of relevant facts including independent experts, testimony at public hearings from industry and the regulator, documentary evidence, and research.

Across its two reports the board made findings and recommendations for industry, unions, the regulator and other stakeholders. The Queensland Government has given in principle support for the recommendations of the BoI.

### *Transport and Resources Committee review*

On 18 August 2022 the Legislative Assembly agreed to a motion that the Transport and Resources Committee (the Committee) inquire and report on current practices and activities of the coal mining industry to cultivate and improve safety culture. The Committee's report was published in February 2023 and included a recommendation that 'the Minister consider amendments proposed in the Consultation Regulatory Impact Statement strengthening protections against reprisal with a view to legislatively implementing them' (Recommendation 10).

## *What has already been done?*

The *Resources Safety and Health Queensland Act 2020* (RSHQ Act), which commenced on 1 July 2020, established RSHQ as an independent statutory body responsible for regulating worker safety and health in Queensland's resources industries.

The findings of the Brady Review into serious accidents in the mining and quarrying sector over the past two decades and the BoI into a serious accident at the Grosvenor underground mine provide industry stakeholders with a clear assessment of where deficiencies exist and where improvements can be made. During 2020-21, RSHQ continued to progress work relating to the findings and recommendations of the Brady Review by focussing [initially] on implementing non-regulatory measures, while commencing the longer-term work on regulatory improvements. The Mines Inspectorate commenced and continues to engage, communicate

with and monitor industry, with the goal of improving reporting of high potential incidents (HPIs), quality of investigations undertaken, and the effectiveness of controls implemented, by industry. RSHQ also established a Central Assessment and Performance Unit to provide key insights and data analysis on trending issues, industry insights and regulation effectiveness measures. The risk-based approach to inspections and audits has also been further refined.

These immediate non-regulatory responses have laid the foundations for industry to adopt pathways to HRO practices, while work on the regulatory proposals has progressed. The regulatory changes are still required to address several legislative gaps and will complement initial efforts. This includes provisions to facilitate an extension of time for operators to provide a report concerning a serious accident or HPI investigation which will assist with more meaningful reporting; improved information-sharing and information-disclosure provisions to ensure safety learnings and statistical information are better shared with industry and other safety and health regulators, etc.).

RSHQ provided support to the Grosvenor mine immediately following the serious accident at the mine on 6 May 2020 and in the process for re-entry to the mine. A significant investigation by the inspectorate was undertaken, providing a large body of evidence which supported the BoI findings and recommendations. RSHQ continues to progress implementation of the recommendations and findings made from the BoI.

In addition, RSHQ initiated a project to progress legislative proposals that modernise regulatory enforcement and strengthen the safety and health outcomes of the resources sector, the 'Facilitating High Reliability Organisation Behaviours in Queensland's Resources Sector and Modernising Regulatory Enforcement' project. This includes responding to the recommendations from the Brady Review and the BoI.

RSHQ has also progressed regulatory amendments to strengthen safety and health protections for resources workers, including improvements for methane gas management and requirements for explosion barriers in underground coal mines; lowering exposure limits for respirable coal dust and respirable crystalline silica in mines; introducing mandatory respiratory health surveillance for mineral mine and quarry workers; strengthening explosives security clearance requirements and provisions to operationalise the gas device approval authority (GDAA) framework.

During 2020-21, RSHQ released ResHealth, a new electronic occupational health surveillance system that allows coal mine workers, doctors and employers to engage directly with an online platform to complete health assessments. This provides easier access to quality health data and enhances health outcomes for current and former mine and quarry workers. RSHQ also partnered with Heart of Australia to deliver health assessment services to remote and regional

Queensland coal, mineral mine and quarry workers, with the construction of a first of its kind mobile health unit commencing in August 2020.

The Minister initiated an industry-wide safety reset in the second half of 2021, similar to the activity undertaken across the mining and quarrying sector in 2019, with the inclusion of workers from the Petroleum and Gas sector and the Explosives sector. This safety reset focused on the principal findings from the Brady Review around chronic unease and the importance of reporting.

## *Previous consultation*

This DRIS follows ongoing consultation with key stakeholders including the mining, quarrying, petroleum and gas sectors as well as unions and government departments. A CRIS was publicly available from 23 September 2022 until 21 November 2022 and 34 submissions were received. The Queensland Government have considered the impact of the proposals based on this feedback and have developed this DRIS as a response.

In 2013, a CRIS was released entitled 'Queensland's Mine Safety Framework' (the 2013 RIS). That process included consultation on proposals for additional certificates of competency, additional court orders, consistent limitation periods for prosecutions and court jurisdiction for prosecutions. A summary of stakeholder concerns relating to the 2013 certificates of competency proposal (which is different to the current proposal) is at Attachment 2. Since that time, these proposals have been considered in more detail and are discussed in the current CRIS.

The concerns industry expressed in relation to the 2013 certificates of competency proposal are not considered to be necessarily applicable to the 2022 proposal, as this proposal is focused on coal mining positions which are managing critical risks; and because these critical risks have been associated with deaths and serious incidents in recent years. Lessons have been learned from the Brady Review, and the BoI.

Support for additional certificates of competency is consistent with recent industry support for continuing professional development for those with certificates of competency, or site senior executive (SSE) notices, and a focus on ensuring critical controls are effectively implemented. The processes of the Board of Examiners (BoE) have since been enhanced including through improved software systems.

Consultation about key topics and priorities has continued with key stakeholders, and proposals have also been strongly influenced by the recommendations of the BoI and the Brady Review.

## *Identification of the problem*

| What is the problem? |
| --- |
| Too many lives are tragically lost or significantly changed by fatal or serious injuries in the resources sector. If we maintain the status quo, history indicates that there will likely be in order of 12 fatalities over any five-year period. This is unacceptable. Complacency cannot be accepted, and action is required to maintain vigilance and to prevent drift into failure. The resources industry is a highly hazardous one and requires risk to be at an acceptable level to prevent incidence of fatalities and serious injury. |

The legislative framework for the mining industry introduced under the CMSHA and the MQSHA (the Mining Safety Acts) were the outcomes of an extensive tripartite process between government, industry and unions following the Moura No. 2 mining disaster in 1994. This framework introduced a risk-based safety and health management system (SHMS) for mining operations to ensure the safety and health of mine workers and persons who may be affected by mining operations.

The significant impact of the Mining Safety Acts and subordinate legislation is strongly suggested by the absence of multiple fatality disasters and an overall reduction in the rate of fatalities per year since its introduction. However, fatalities are still occurring, and this is unacceptable for the safety and health of resource sector workers. Prior to January 2000, a total of 1,451 workers had lost their lives in the Queensland's mining and quarrying industry since 1877. A total of 47 mining industry fatalities occurred between January 2000 and the end of July 2019 (refer Figure 1).[14] A considerably higher number of fatalities occurred per financial year between 1900 and 2000[15] (refer Figures 2 and 3) than occurred in the review period from January 2000 and the end of July 2019. When comparing mining fatalities to other work-related fatalities, in the 2019 annual year there were a total of four work related fatalities in the mining industry in Queensland, accounting for a fatality rate of 6.0 per 100,000 workers, which was the third highest work-related fatality by industry rate.[16]

The Brady Review found that there is a fatality cycle evident in the industry – meaning, there are periods when fatalities occur, followed by periods when there are few to none. This is demonstrated in the following fatality charts. An explanation for this is that when a significant number of fatalities occur, industry tightens up safety requirements in response; however, this may then be followed by a drift into complacency and failure where the fatality rate increases.

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[14] Dr Sean Brady, Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019, December 2019, at https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T197.pdf.

[15] As above.

[16] Workplace Health and Safety Queensland, Key work health and safety statistics, Queensland 2020 available at https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0024/70728/6336-key-whs-statistics-qld-2020.pdf.

This can also be demonstrated in the fatality cycle, in the financial year of 2004-05 where there were four fatalities, but in the following financial year there were half the number of fatalities (two) and then in 2006-07 there were four fatalities. A similar cyclical pattern continues in the available data.

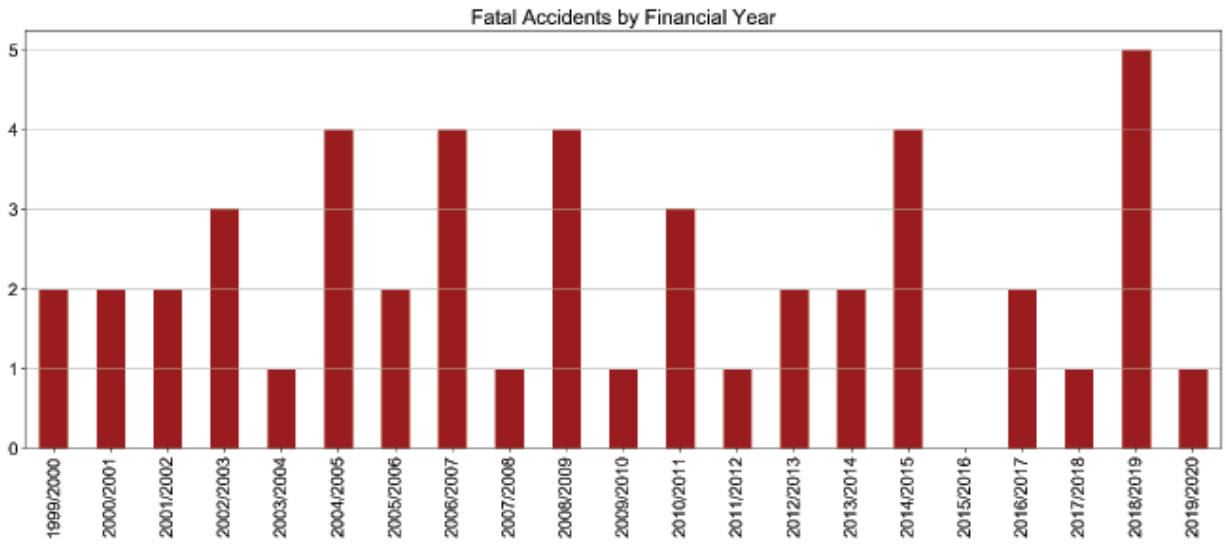


*Figure 1 - Number of fatalities in each financial year for the review period*
Note the '2019/2020' result is to 31 July 2019 only; total of three fatalities for 2019-20 period.

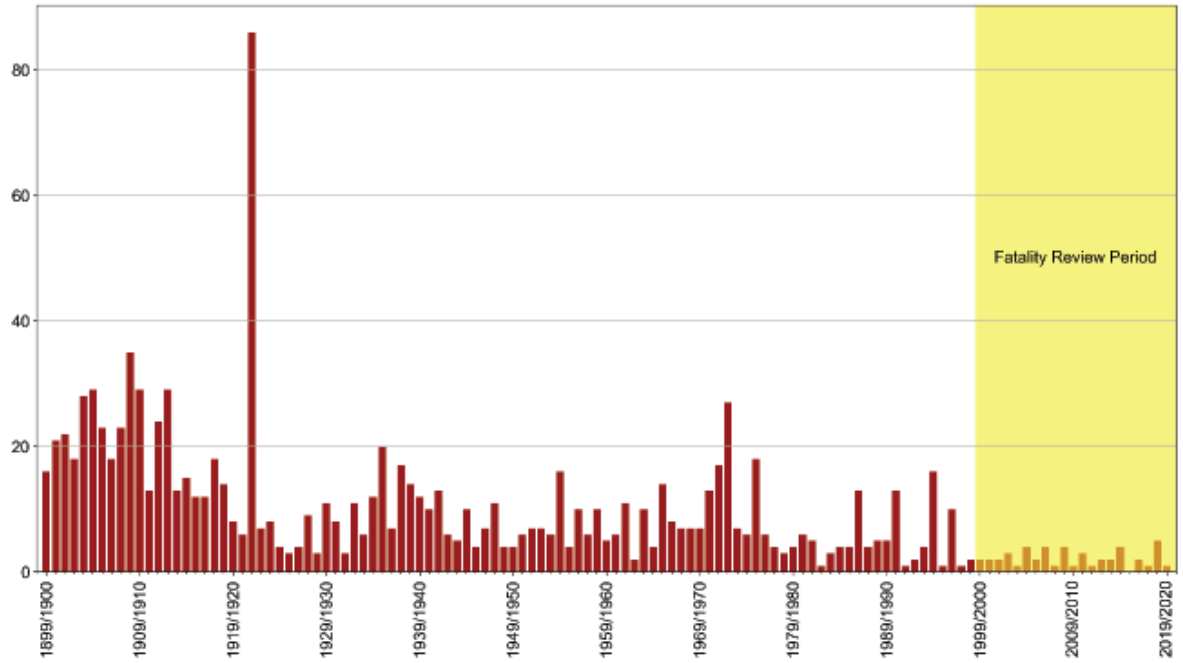


*Figure 2- Number of fatalities per financial year from 1900 to July 2019*

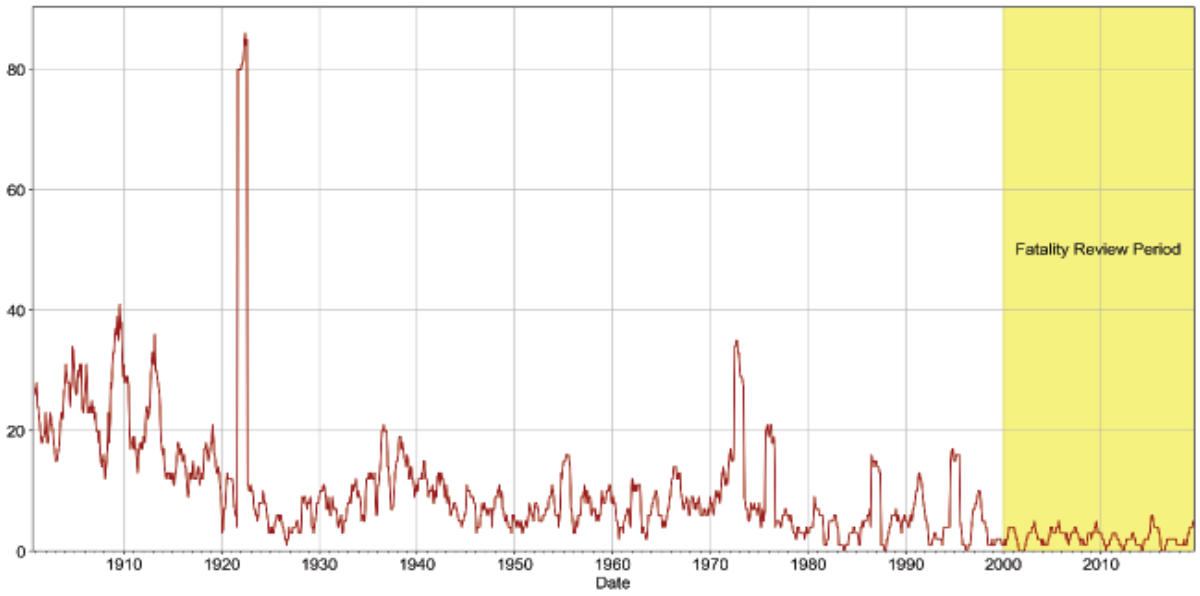


*Figure 3 - 12 month rolling sum of fatalities from 1900 to 2019*

Figures 4 and 5 (below) show the relationship between HPIs and fatalities, and HPIs and serious accidents (respectively) by sector for the review period. The data demonstrates that there were significantly more HPIs reported in the surface (i.e., open cut) coal sector than in any other industry; however, there were also significantly more hours worked in this sector compared to the other sectors.[17]

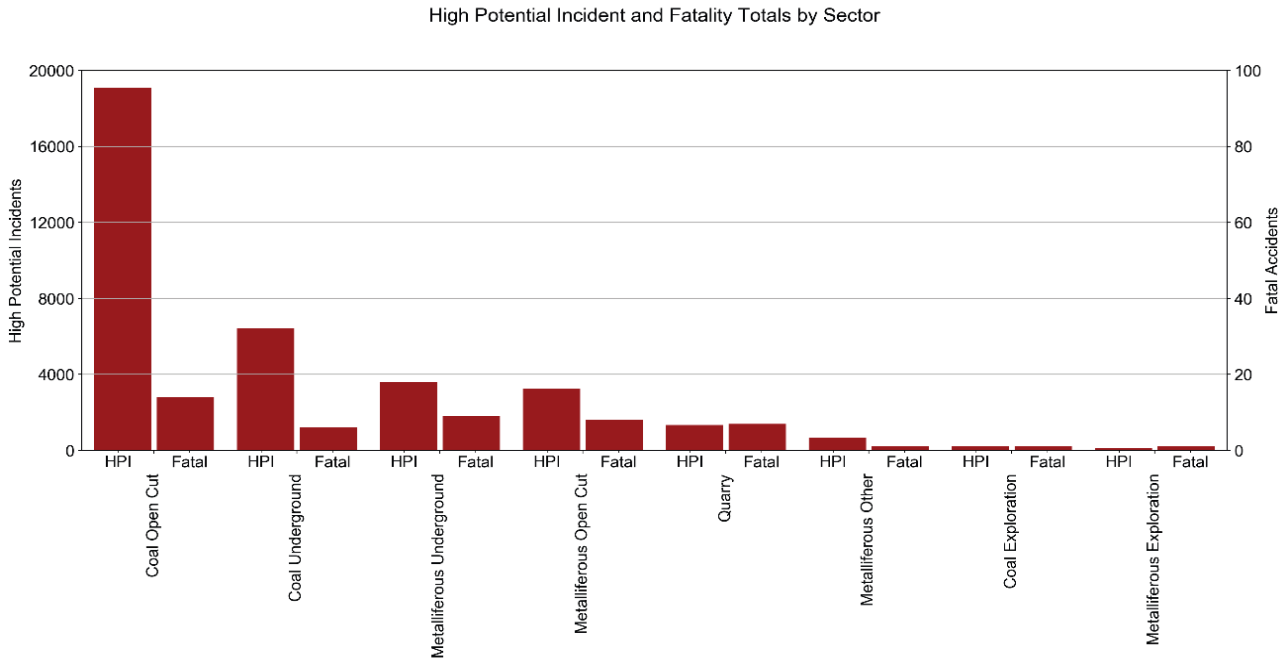


*Figure 4 - HPI and fatality totals by sector*

[17] Dr Sean Brady, Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019, December 2019, at https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T197.pdf.

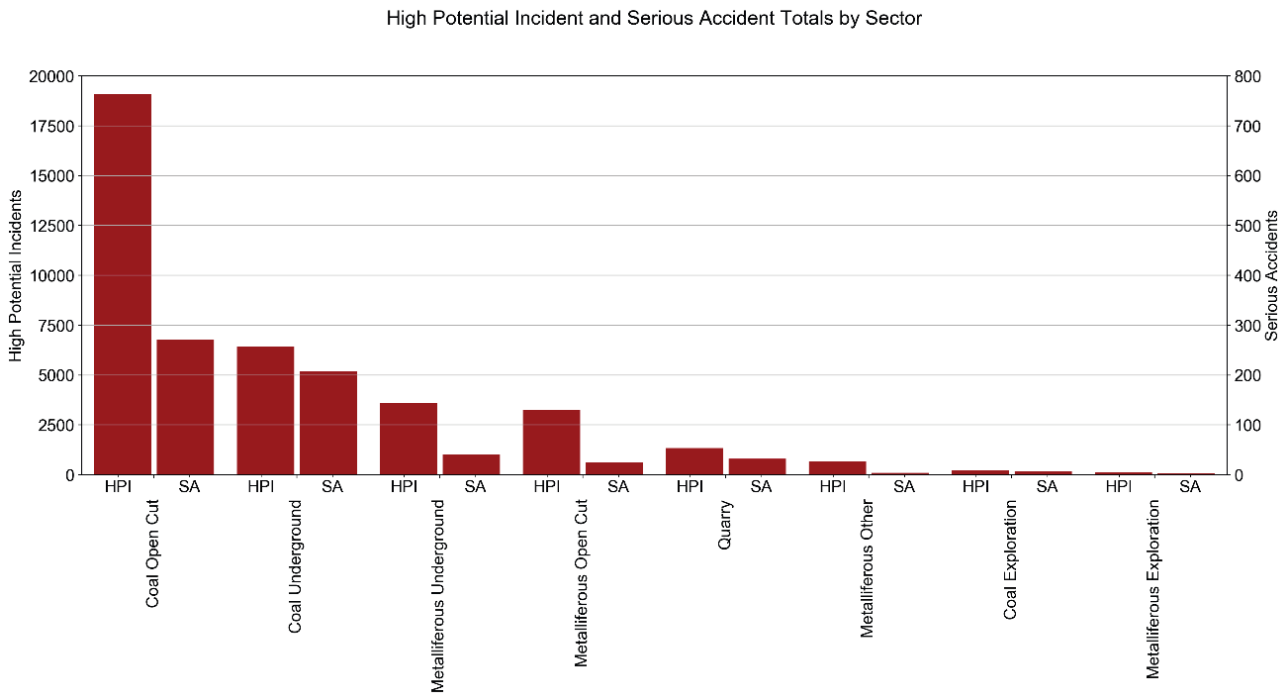


*Figure 5 - HPI and serious accident totals by sector*

The data demonstrate that approximately 75-85 per cent of HPIs do not result in injuries and as Brady states, "these HPIs are near misses, which offer genuine opportunities for the industry to identify hazards and remove them before they can cause harm."[18]

The Brady Review also found that the causes of fatalities are typically a combination of everyday straightforward factors such as a failure of controls, a lack of training and/or absent or inadequate supervision. They were not attributable to a single cause such as human error, bad luck or freak accidents. Many were preventable and there was rarely a single cause. Almost all of the fatalities were the result of systemic, organisational supervision or training failures, either with or without the presence of human error.

Figure 6 (below) is adapted from information in the Brady Review and provides a causal diagram which demonstrates that an accident is a result of multiple factors – i.e., physical, individual, supervision and organisational.

[18] Dr Sean Brady, Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019, December 2019, at p.43 https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T197.pdf.

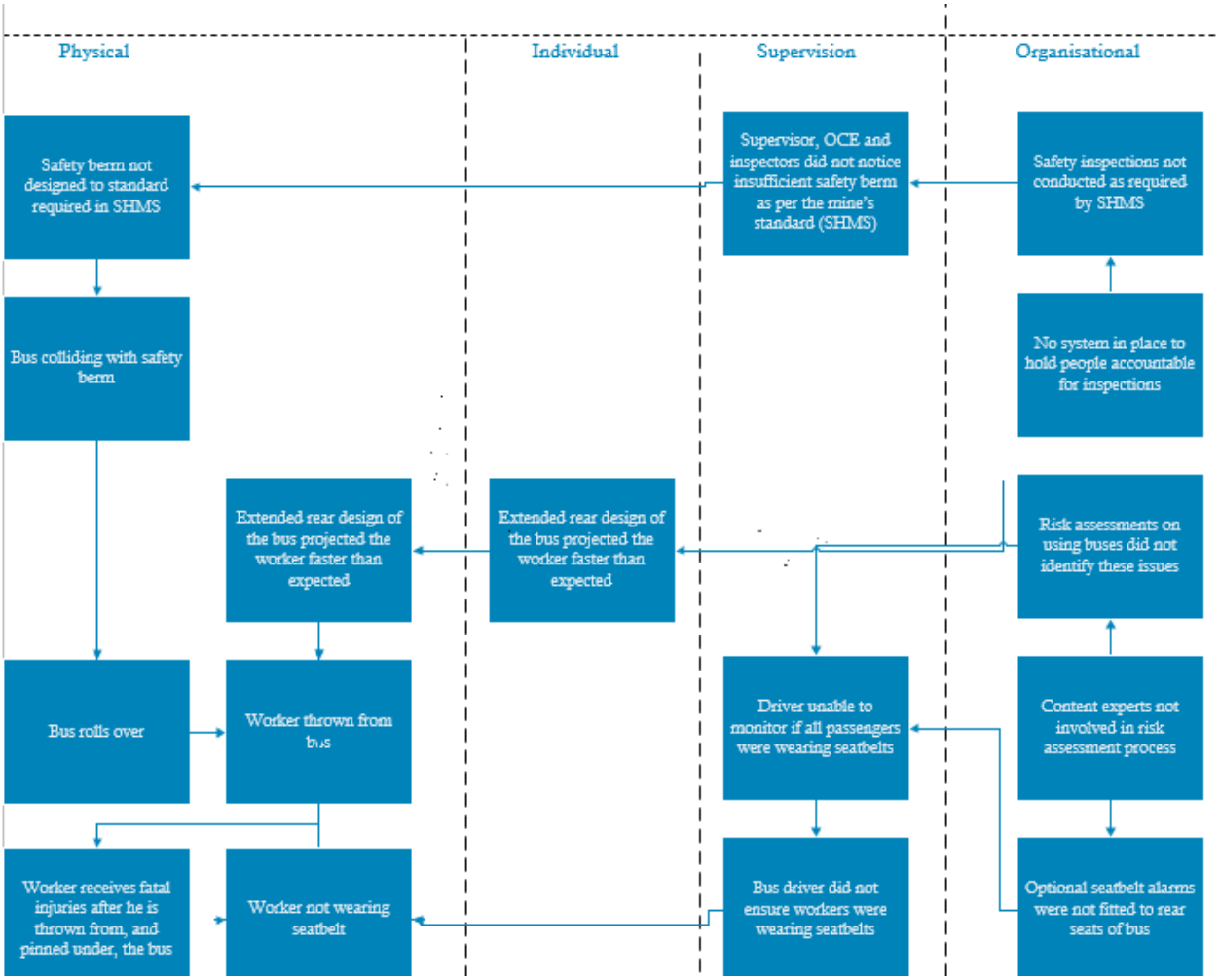


*Figure 6 - Accident causal diagram adapted from the Brady Review*

The Brady Review also indicated that some mines are not learning from past mistakes, fatalities and HPIs. Specifically, the Brady review found that "there were 10 fatalities involving known faults, where individuals were aware of them, but no action was taken" and that "9 fatalities had known near misses occur prior to the fatality. In some cases, prior fatalities had occurred in a similar manner."[19] It is unclear what the barriers to implementing effective system improvements and learning from past mistakes were in relation to these fatalities. Under reporting of safety and health incidents was also identified as a key issue by the Brady Review which stressed the importance of a strong and open reporting culture to improve safety. By implementing recommendations from the BoI and the Brady Review and, particularly, supporting industry through implementing approaches consistent with HROs (e.g., a strong reporting culture), it is expected these previous failures will not be repeated in future.

[19] Dr Sean Brady, Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019, December 2019, at https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T197.pdf.

On 6 May 2020, a serious accident occurred at the Anglo American Grosvenor mine, where there was ignition of methane, resulting in five miners suffering extensive burns to their upper bodies and airways. The BoI was established to inquire into this event along with 40 HPIs involving methane exceedances occurring at four mines between 1 July 2019 and 5 May 2020. The inquiry made recommendations for improving safety and health practices and procedures and for mitigating against the risk of similar incidents in the future. Key safety concerns raised by the BoI and their recommendations are summarised in Table 2.

*Table 2 – BoI key safety concerns and legislative enhancements*

| Recommendation number | Overview of issue and recommendation | Proposed changes |
|---|---|---|
| Recommendations 19 (BoI Report, Part I) and 6 (BoI Report, Part II) | On the evidence before the BoI it found that there were a significant number of methane exceedances occurring at a number of mines which should be a rare occurrence. The BoI reviewed these exceedances and found that they should have been treated as an indicator of a failure of critical controls for methane management, namely ventilation and gas drainage. The BoI found on the evidence before it that these methane exceedances, however, were not identified at the time as involving a failure of a critical control when they should have been. The BoI were of the view that the legislation should be amended to specifically require the development and implementation of critical controls. | Enhanced requirements for critical controls |
| Recommendations 13, 14 and 15 (BoI Report, Part I) | Although certain safety critical roles require the incumbent to hold certain competencies – this is not the case when a person undertakes these duties while an incumbent is absent. Evidence presented to the BoI indicated that a person appointed to act as the SSE during an SSE's absence of more than 14 days ought to hold a first or second class certificate of competency. Similarly, a person appointed to have control and management of an underground mine when the UMM is not in attendance ought to have either a first or second class certificate of competency. On the evidence before it, the BoI found that an SSE for an underground coal mine ought to be the holder of a first class certificate of competency. The BoI were of the view that the current | Improved competency requirements for safety critical roles |

| | | |
|---|---|---|
| | arrangements were not satisfactory and were not adequate to protect worker safety. | |
| Recommendation 12 (BoI Report, Part I) | Current legislation (CMSHA and the CMSHR) does not require training to include the statutory obligations imposed on various persons and entities at a mine. After hearing the evidence before it, the BoI found it would be beneficial for safety for the training scheme to cover the applicable legislation including, but not limited to, the legislative safety and health obligations. | Improved training requirements |
| Recommendation 25 (BoI Report, Part I) | After hearing evidence, the BoI identified that where a coal mine operator negligently caused the death of a worker, they may not be liable for an industrial manslaughter offence where a labour hire agency or independent contractor was the employer of the worker. This is because the industrial manslaughter offence makes the "employer" liable.<br><br>Consequently, the BoI raised that the coverage of the industrial manslaughter offences may not reflect Parliament's intention to treat deaths of workers on all work sites consistently. | Improved coverage for industrial manslaughter offence provisions |
| Recommendations 23, 24 and 25 (BoI Report, Part II) | On the evidence before it, the BoI found that labour hire agencies providing workers to the coal mining industry may have no clear and express obligation to ensure that the workplaces into which they send their employees are as safe as reasonably practicable and may be entirely unaware of the occurrence of incidents that pose a risk of significant adverse effects to the safety and health of those employees. The BoI were of the view that further coverage of labour hire obligations was needed in the legislation. | Improved coverage of labour-hire agencies and their obligations under the legislation |
| Recommendation 29 (BoI Report, Part II) | The evidence before the BoI indicated that mine workers hesitate to complain about safety issues for fear of reprisal action. The BoI were of the view that the reprisal provisions in the legislation could be clarified to strengthen protection for workers. | Strengthen protection for workers from reprisal actions when raising safety issues |
| Recommendation 27 (BoI Report, Part II) | On the evidence before it, the BoI found that there is a need to improve the mechanisms for safety issues to be raised by workers and that underreporting and non-reporting of safety risks is a problem, particularly in an industry where there is an increasing trend of contractor employment. This | Changes for safety committees |

| | | |
|---|---|---|
| | is because contractor workers are reluctant to raise health and safety issues for fear of losing their jobs.<br><br>The BoI were of the view that the legislation should be amended to allow for safety committees for the coal mining sector to improve the mechanisms for safety issues to be raised by workers. | |

Sadly, there have been further fatalities since the Brady Review in 2019 and a total of 55 fatalities have occurred since January 2000. While no dollar value can ever be placed on a human life, in economic terms, the national Office of Best Practice Regulation has suggested that the value of an avoided death is $5.1 million.[20] As a consequence of a fatality there are substantial and unquantifiable negative social and psychological impacts on the families, friends and communities impacted by a mining disaster. Quantifiable losses are also incurred as mines stand to lose significant income from the temporary closure of a mine site during the investigation of a fatality. In the most serious scenarios, there can also be some sterilisation (permanent loss) of coal resources due to conditions being too dangerous around the impacted seam.

If the current approach to safety continues to be used, then similar safety performance and outcomes could be expected. This is supported by the Brady Review, which noted that if the industry continues to take a similar approach to safety, using the same philosophy and methodologies adopted over the past 19.5 years, then similar safety outcomes should be expected.[21] This presents an unacceptable risk to human health and safety. A changed approach and changes to the safety framework for the resources sector is required to improve safety performance.

Changes to the safety framework also need to consider the effectiveness of compliance and enforcement tools currently available under the four Resources Safety Acts, as many of these tools have remained largely unchanged since the introduction of the respective Acts and have not kept pace with those available under comparable and more contemporary safety and health legislation (e.g., the Queensland *Work Health and Safety Act 2011* (WHSA) and resources health and safety laws in other key mining states such as New South Wales (NSW) and WA).

[20] The Commonwealth Office of Best Practice Regulation, 'Best Practice Regulation Guidance Note Value of statistical life' at https://obpr.pmc.gov.au/sites/default/files/2021-09/value-of-statistical-life-guidance-note-2020-08.pdf, August 2021.

[21] Dr Sean Brady, Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019, December 2019, at https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T197.pdf.

## *Objective of government action*

The objective of the government action is to support the Queensland resources industry to protect workers through implementation of appropriate reforms to reduce the rates of serious accidents and fatalities.

## *Consideration of options and impact analysis*

The following options have been considered to address the identified problems and were proposed for public consultation.

**Option 1** – Package of preventive and proactive reforms: This comprehensive preventive and proactive package of regulatory safety reforms will include responding to recommendations from independent reviews such as the Brady Review and the BoI.

The proposed preventive and proactive regulatory reform package is detailed in Table 3 (below) and includes:

- **Facilitating the growth in HRO behaviours** within the resources sector. To achieve this, emphasis will be placed on reforms that improve the implementation of critical controls by industry, increase competency requirements for safety critical roles, improve training, continual professional development requirements, incident notification and reporting and strengthen protections for workers raising safety issues.
- **Modern regulatory enforcement** powers. This will include enhancements to existing tools such as to the directives framework and the introduction of new tools such as enforceable undertakings and enhanced court orders.
- **Contemporary legislation**. This involves updating the legislation to provide for emerging operations and enhancing the existing frameworks e.g., to ensure there is adequate coverage of labour hire agencies; remote operation centres; and to improve the coverage of the industrial manslaughter offences.
- **Consistency of Resources Safety Acts**. This will ensure consistency of regulation for the Resources Safety Acts.
- **Operational amendments**. This will help ensure legislation is kept contemporary and effective.

A number of additional amendments are also proposed to be progressed.

*Table 3 – List of proposals to be progressed under Option 1*

| **Proposal description** |
|---|
| Facilitating the growth in HRO behaviours |
| Mandatory risk control requirements for coal mines and mineral mines and quarries to be clarified for ***critical controls***. |
| Additional ***competency requirements*** for key critical safety roles for coal mines and for those left in charge during absences in key safety critical roles. |
| Supporting framework for ***continuing professional development*** (CPD) including for compliance and enforcement for coal and mineral mines and quarries. This will support the CPD Regulations. |
| Establish ***site safety and health committee*** (SSHC) for coal mines. |
| ***Improved data and incident reporting*** including removal of lost time injury (LTI) as a safety indictor; providing for an extension for up to 12 months for a report in relation to an incident to be provided; and consistent penalties for failure to report across the Resources Safety Acts. |
| ***Improved information sharing*** to support the transition to HROs. |
| Modern regulatory enforcement |
| The ability to issue ***enforceable undertakings*** to allow for the regulator to enter into binding agreements in situations where specific improvements to safety and health management are required. |
| Broaden ***court order provisions*** to enable sentencing to be tailored to the situation, achieving a better balance between increasing compliance, improving safety outcomes and deterrence. |
| Refining and improving the ***directive powers*** across all Resources Safety Acts. |
| Contemporary legislation |
| Ensuring there is clarity concerning contractors and ***labour hire agencies*** in the Mining Safety Acts and their safety and health obligations. |
| Refining the ***industrial manslaughter*** provisions to ensure they apply to whomever employs/engages or arranges for a worker to perform work and whose negligent conduct caused the death of a worker (and a senior officer of such an entity). |
| Ensuring there is clarity concerning the obligations of ***remote operating centres*** off-site supervisors for coal mines. |
| **Additional**: Ensuring that ***safety critical roles are located on-site*** for coal and mineral mines and quarries. |
| ***Contemporary board of examiners*** changes for the appointment of an independent chairperson and a board member with demonstrated expertise in the assessment of competence. Changes so the board of examiners (BoE) is under the Minister's control and direction for appropriate matters. |
| Consistency of Resources Safety Acts |
| Align the ***court jurisdiction*** for prosecutions across all Resources Safety Acts. Proceedings would be heard under the mainstream Magistrates court system. This would ensure the same appeal rights. |
| Allowing for consistent timeframes for the ***commencement of prosecutions*** across all Resources Safety Acts, namely so they can be commenced up to two years after the offence comes to the notice of the complainant. |
| Enhance ***protection from reprisals*** by prescribing appropriate and consistent penalties for reprisal offences and providing a clear definition of 'detriment'. |

| |
|---|
| To ensure ***consistent board of inquiry offence provisions*** across Resources Safety Acts that are both compatible with human rights, and the associated penalties are commensurate with the level of seriousness of the offence. |
| Ensure that the ***penalties for obstruction of inspectors, officers or representatives*** are consistent across the Resources Safety Acts. |
| Provide consistent ***penalties for failing to provide help to SSHC representatives and committees***. |
| Operational amendments |
| Improve the ***explosives security clearance*** regime including removing duplicate requirements across comparable regimes that also impose security screening standards i.e., employees of licensed weapons dealers. |
| Provide clarity and consistency with regard to ***legislative training requirements*** for coal mine workers, similar to those already present in legislation for other mine workers. |
| Address ambiguity in the ***gas device approval authority*** scheme. |
| Streamline ***domestic biogas digesters*** requirements, including exempting them from being subject to the same standards as operating plant. |
| Additional proposed amendments: clarifying amendments to the Mining Safety Acts arising from the ***University of Queensland review*** to help confirm the intent of current provisions and improve workability (refer Attachment 3); and **other minor amendments** (refer Attachment 4) including RSHQ Act consequential amendments (refer Attachment 5 for details on these). |

**Option 2** – Status quo:

No change. This option proposes to continue the existing framework in its current form. This option is not recommended as it will not lead to any further safety and health improvements or to a reduction of fatalities and incidents. This option does not support continuous improvement and will not meet the policy objectives outlined in the CRIS.

**Option 3** – Non-regulatory option:

This option proposes that RSHQ undertake a broad education program to assist the resource sector industry to adopt principles and practices of HROs. This would include focusing on the need for industry to implement critical controls, to identify precursors to fatalities, and to use these to prevent accidents and fatalities. Under this option, industry should focus on ensuring workers are appropriately trained and supervised for the tasks they undertake. This would be supported by the regulator within existing legislative powers – obtaining, analysing and proactively sharing safety learnings from incidents and fatalities – as well as the regulator's inspection, audit and compliance program.

Without the further regulatory legislative changes to support this approach, it is not seen to be a viable option as the measures are not sufficient to achieve the objective of the CRIS. Professor Andrew Hopkins states that "educational programs have their place. But an educational program, by itself, cannot be expected to move the culture of an organisation in a HRO

direction."[22] Hopkins discusses the need to address organisational practices – for the HRO regulator, this requires appropriate regulatory tools. Accordingly, it is considered this option alone is inadequate to achieve the objectives or deliver the required changes. It also does not implement the outcomes of the BoI which the government has committed to implementing.

A summary of the impacts from the three identified options is provided at Table 4.

*Table 4 – Summary of impacts from identified options*

| Options | Impacts |
|---|---|
| Option 1: Package of preventive and pro-active reforms | This option will action expert recommendations from the BoI and Brady Review; will assist in reducing the incidence of fatalities and serious accidents; will encourage a reporting culture by improving the collection and analysis of incident reporting and data to enable industry learning; will facilitate industry to move to become HROs; will ensure that the resources sector has a more competent and informed workforce in relation to safety and health; will provide for an expanded toolkit for compliance and enforcement; will support workers to feel safe and to come forward with health and safety concerns; and will support the regulation to remain contemporary and keep pace with advancements.<br><br>The costs of this package of reforms are not significant. The majority of the reforms have little or no cost impact on industry. Details of the cost impacts for each of the reforms is provided under the individual section which discusses the reforms. The proposal which does have cost implications for industry is that for additional certificates of competency and for the completion of CPD by certificate of competency holders, and SSE notice holders. A full cost-benefit analysis has been undertaken for the additional certificates of competency proposal and this is included in Appendix 4. Modelling of reductions in major incidents, fatalities and injuries produce significant benefits that outweigh the identified costs of the reforms. This modelling suggests that the certificates of competency proposals will result in benefits to the present value of $67.1 million or an annual equivalent value of $10.3 million a year, far outweighing the cost associated with new certificates of competency for key statutory positions of $5.4 million as a present value or $833,792 as an annual value.<br><br>The costs of the CPD scheme are estimated under the CPD proposal but potential benefits of CPD are not also modelled. The estimated costs are $3.78 million a year for existing certificate of competency holders, and SSE notice holders, and a further $710,000 per year after the five year transitional period for the proposed additional certificates of competency holders to complete CPD. |

[22] Andrew Hopkins, 'A Practical Guide to becoming a "High Reliability Organisation"', *Australian Institute of Health and Safety,* <https://www.aihs.org.au/sites/default/files/A%20Practical%20Guide%20to%20becoming%20a%20High%20Reliability%20Organisation%20-%20Andrew%20Hopkins.pdf>.

| | |
|---|---|
| Option 2: Status quo | This option will maintain the current state of play, will not yield any further safety outcomes and will likely maintain the current fatality and serious accident cyclical rates. The negative impacts of this approach will mean ignoring expert recommendations, failing to remedy identified issues with the legislative framework and the community and workers will not see the safety benefits proposed under Option 1. |
| Option 3: Non-regulatory option | This option would rely solely on the regulator providing information to the resources sector, and encouraging the resources sector to share information, on how to improve safety and health outcomes. This option would rely on industry and workers voluntarily accessing and implementing the information. This option would be supported by the inspection, audit and compliance program of the regulator. This education program would be funded from RSHQ's operating budget. If serious accidents or fatalities occurred – they must necessarily receive priority over the education program.<br><br>Given that this option involves an educative approach, which would not be supported by legislative changes, it is anticipated that it would have a minimal positive impact. RSHQ has explicitly incorporated this approach into its current compliance and enforcement policy, the first version of which was released in 2017. Industry performance in the intervening period demonstrates other impetus is needed to stimulate substantial improvement. It also would not address the BoI recommendations for legislative amendments, to which the Minister has publicly committed.<br><br>This option is not seen as a viable as the measures are not sufficient to achieve the CRIS objective. Additional information in relation to Option 3 is provided at Appendix 5. |

## *Recommended option*

RSHQ considers that Option 1 will meet the reform objectives, will deliver the greatest net benefit to workers, industry and the community and is therefore the recommended option. This option considers expert recommendations from the BoI and the Brady Review and is anticipated to provide a contemporary framework that is aimed at supporting industry to better protect workers through implementing approaches consistent with HRO theory to reduce the rates of serious accidents and fatalities.

Overall, the benefits provided by the package of reforms in Option 1 include:

- Improved risk management practices
- Improved competency of persons in safety critical roles
- Improvements for data and incident reporting and sharing safety information
- More effective compliance tools and orders

- Contemporary legislation which deals with emerging issues in the industry such as labour hire agencies and remote operating centres
- Improved mechanisms for safety issues to be raised by workers and improved protection for workers from reprisal action for raising safety issues
- A more consistent legislative approach across the resources sectors which provides certainty for the sector and more equitable treatment
- A reduction in regulatory burden (see the operational amendments)
- Continuous improvements to the legislation to support the effective and efficient administration of the legislation (see the minor amendments).

The ultimate benefit realisation from supporting industry to transition to HROs is a reduction in the rates of serious accidents and fatalities. This ought to translate to a reduction in the risk of a mining disasters, which has flow-on benefits, reducing the risk of mine closure and sterilisation of resources as a result of an explosion.

The costs of this package of reforms are not significant. The majority of the reforms have little or no cost impact on industry. Details of the cost impacts for each of the reforms is provided under the individual section which discusses the reforms. The proposal which does have cost implications for industry is that for additional certificates of competency. A full cost benefit analysis has been undertaken for the additional certificates of competency proposal and this is included in Appendix 4.

The additional certificates of competency have been modelled as potentially contributing to benefits to the present value of $67.1 million or an annual equivalent value of $10.3 million a year, far outweighing the cost associated with new certificates of competency for key statutory positions of $5.4 million as a present value or approximately $833,792 as an equivalent annual value. The cost benefit analysis illustrates the potential benefits relative to costs and these include a decrease in injuries, a reduction in fatalities, a reduction in the risk of an underground coal mining disaster and a reduction in the risk of mine closure and sterilisation of coal resources as a result of an explosion.

RSHQ has considered the impact of the proposed reforms based on feedback to the CRIS and will consider further feedback on the consultation draft of the Bill before legislation is changed.

## *Human rights assessment*

The introduction of some of the proposed legislative amendments is likely to engage human rights and some may also limit certain rights.

Queensland Government public entities, including RSHQ, have obligations under the *Human Rights Act 2019* (HR Act), to act and make decisions in a way that is compatible with human rights, and to give human rights proper consideration when making decisions – including legislative proposals. While legislation may limit human rights, the limitations must be proportionate i.e., in the least restrictive way possible to achieve the objectives of the legislation.

Compatibility with human rights has been considered in relation to the proposed legislative amendments and some human rights may be limited by the introduction of the proposed legislative amendments. This includes:

- Right to recognition and equality before the law (HR Act, section 15)
- Right to life (HR Act, section 16)
- Freedom of movement (HR Act, section 19)
- Freedom of expression (HR Act, section 21)
- Right to property (HR Act, section 24)
- Right to privacy and reputation (HR Act, section 25)
- Right to liberty and security of person (HR Act, section 29)
- Right to a fair hearing (HR Act, section 31)
- Rights in criminal proceedings (HR Act, section 32).

### *Summary*

Human rights have been considered as part of the proposal to amend the legislation. On balance, it is considered that the limitation to certain human rights is justifiable as the amendments aim to improve safety and health across the sector, promote the right to life and security for workers. Should the legislative amendments be assessed as the most appropriate response, a more detailed human rights impact assessment will be undertaken as part of the drafting process and, where appropriate, will incorporate feedback from stakeholders and those impacted.

## *Facilitating the growth in HRO behaviours*

The following proposals aim to foster the adoption of HRO theory[23] principles by the Queensland resources sector. The proposals will assist organisations focus on identifying incidents that are the precursors to larger failures, promote organisational resilience, improve the reporting of such incidents, and to also use incident information to prevent future failures occurring.

### Introducing critical control management

*Issue*

The current Mining Safety laws do not attempt to cover every aspect of risk management but do cover mandatory risk assessment and risk control aspects. The Mining Safety laws require mine operators and site senior executives (SSEs) to ensure development and implementation of an effective SHMS based on risk assessment, risk control, and existing specific requirements. For the coal mining industry, this includes principal hazard management plans.

However, the continuing number of serious accidents and fatalities at Queensland mines and quarries is an indicator that traditional risk management practices are not yielding the required results and that improvements are needed to improve safety performance. The BoI and the Brady Review both presented information about the problem across the coal mining industry, and evidence that existing arrangements do not adequately address the problem.

Some coal mine operators already voluntarily apply critical controls, and the QRC and some operators in their submissions noted that a number of coal mine operators have been actively implementing critical controls and that knowledge and understanding of critical controls across the Queensland coal mining industry has been increasing. Only larger operators in the metalliferous mining and quarry industries have started to implement critical controls.

The key issue is that more effective controls must be applied to prevent hazards from causing harm, especially principal hazards. Unfortunately, the current principal hazard management plan provisions for coal mining do not include a clear link to critical controls. Similarly, current risk and hazard management provisions for metalliferous mining and quarrying also do not clearly link to

[23] Professor Andrew Hopkins, 2009, *Learning from high reliability organisations*, Sydney, CCH Australia Limited.

critical controls. The mandatory risk management framework under the Mining Safety laws could be improved through the addition of specific requirements relating to critical controls.

### *Rationale for government action*

Critical control management (CCM) is a risk management process that focuses on identifying and managing controls that are critical to the prevention of catastrophic or fatal events. CCM is a progression in risk management practices, not a revolutionary change. Current risk management practices are still relevant, but CCM adds aspects that help organisations focus on, and more effectively manage, catastrophic risk.[24]

The BoI identified that risk management of hazards at coal mines could be improved by implementing requirements for controls considered of critical importance or 'critical controls'. Improvements would contribute to reducing future fatalities in the Queensland coal mining industry, through more effectively identifying, understanding and controlling hazards. The Brady Review identified that key causal factors behind underlying system failures that resulted in a large number of fatalities, included risk "controls meant to prevent harm being ineffective, unenforced or absent…". Recommendations 2 and 5 of the Brady Review are most relevant and cover the failure of controls, and the need to focus on ensuring the effectiveness and enforcement of controls, including implementing more effective controls.

Both the Brady Review and the BoI also focused on HRO theory, which includes being proactive in seeking out hazards before they occur, and effectively controlling them (i.e., by embracing a "preoccupation with failure" and a "reluctance to simplify"). When hazards are identified they must be addressed with effective controls, rather than minimally managed with the least effective controls available.

The Brady Review recommended that the mining industry should adopt a number of principles of HRO theory, in order to reduce the rate of serious accidents and fatalities. This includes identifying incidents that are precursors to larger failures and using this information to prevent future failures and, where appropriate, implementing multiple layers of defence to promote resilience in systems and avoid over-simplification.[25] HRO incident reporting also identifies when hazards have not been adequately managed, through the risk controls used.

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[24] M, Hassall and J Joy., *Effective and Efficient Implementation of Critical Control Management in the Australian Coal Mining Industry by 2020* (2016) Project No. C24006 Report, Australian Coal Association Research Program.

[25] Andrew Hopkins, *Disastrous Decisions: The Human and Organisational Causes of the Gulf of Mexico Blowout* (CCH, Australia, 2012).

The Brady Review observed that while the Mining Safety laws have made significant progress in making the industry safer, despite this progress, the current approach has not been sufficient to reduce the fatality rate to zero in the long term. The Brady Review also noted that no single change to the mining industry will reduce the fatality rate and stated that "what is instead required is a change in approach to how the industry identifies and controls hazards, as well as how it recognises and addresses them when these controls are eroding or ineffective."

The BoI covered how some coal mine operators voluntarily apply critical controls based upon the International Council of Mining and Metals Critical Control Management – Good Practice Guide (ICMM guide), within the existing SHMS/risk management framework under the Mining Safety laws. The ICMM guide explains a critical control in the following way:

> *"A control is an act, object (engineered) or system (combination of act and object) intended to prevent or mitigate an unwanted event.*
>
> *A critical control is a control that is crucial to preventing the event or mitigating the consequences of the event. The absence or failure of a critical control would significantly increase the risk despite the existence of the other controls. In addition, a control that prevents more than one unwanted event, or mitigates more than one consequence is normally classified as critical."*

However, voluntarily applying critical controls based upon the ICMM guide is not occurring across the entire industry, and there is limited understanding of how to effectively apply critical controls among some coal or mineral mine operators. This was evident in the BoI review of methane exceedances (i.e., HPIs) that occurred at the Grosvenor Mine, Oaky North Mine, Moranbah North Mine and Grasstree Mine. The BoI found that the critical controls of ventilation and gas drainage for methane management did not deliver the desired outcomes in terms of keeping methane concentration below prescribed levels. None of these HPIs were identified at the time as involving a failure of a critical control. Ventilation and gas drainage are critical controls in the management of methane to prevent a catastrophic incident such as an underground explosion and this should have been recognised.

The Brady Review recommended that industry needs to focus on ensuring the effectiveness and enforcement of controls to manage hazards. Given the serious accident frequency rate, industry should implement more effective controls (such as elimination, substitution, isolation, or engineering). The Brady Review reported that a significant number of the controls put in place in the aftermath of an incident were administrative in nature. The majority of the fatalities reviewed involved at least one failed, or absent risk control, that could have avoided the tragedy.

The BoI Report encouraged building on the concept of HROs by advocating for "critical control management as a risk management process focusing on identifying and managing the controls that are critical to the prevention of catastrophic events." The Report also noted that CCM was a pathway for moving industry towards adoption of HRO theory.

| Source | Evidence |
|---|---|
| Brady Review | *Recommendation 2* - The industry should recognise that the causes of fatalities are typically a combination of banal, everyday, straightforward factors, such as a failure of controls, a lack of training, and/or absent or inadequate supervision. Internal incident investigations in mining companies must strive to capture these combinations of causal factors, and avoid simplifying them to a single cause, such as human error, bad luck or freak accidents, which has the potential to mask the underlying system failures.<br><br>*Recommendation 5* - The industry needs to focus on ensuring the effectiveness and enforcement of controls to manage hazards. Given the increasing Serious Accident Frequency Rate, industry should implement more effective controls (such as elimination, substitution, isolation, or engineering controls). A significant number of the controls reported put in place in the aftermath of an incident were administrative in nature.<br><br>*Recommendation 6* - The industry should adopt the principles of High Reliability Organisation theory in order to reduce the rate of serious accidents and fatalities. At its most fundamental level, High Reliability Organisation theory focuses on identifying the incidents that are the precursors to larger failures and uses this information to prevent these failures occurring. Adopting a High Reliability Organisation approach will require the refinement or addition of specific competencies to both the mining industry and the regulator. |
| BoI Report, Part I | *Finding 15* - Critical controls associated with principal hazard management plans should be monitored and reported on by the Inspectorate. Such monitoring and reporting on critical controls would include those associated with the gas principal hazard management plan.<br><br>*Recommendation 6* - RSHQ audits and reports on the proper identification and effective implementation of critical controls associated with the management of principal hazards. In particular, RSHQ focuses on the auditing of critical controls associated with the gas principal hazard management plan.<br><br>*Finding 78* - The effective implementation of Critical Control Management (CCM) will move the industry towards adopting the principles of HRO theory, the desirability of which was recognised in the Brady Review and by Mr Mark Stone, Chief Executive of RSHQ, in his evidence. |

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| | *Recommendation 19* - RSHQ takes steps to amend the Act and Regulation to require a coal mine to develop a set of critical controls with performance criteria which must be incorporated into Principal Hazard Management Plans (PHMPs), and which require:<br><br>a. the SSE to notify the regulator in the event of a failure of the critical control to meet its performance criteria;<br>b. the SSE to monitor the effectiveness of the critical controls, and report the results to the mine operator, on a monthly basis; and<br>c. coal mine operators to audit critical controls as part of the audit prescribed by section 41(1)(f) of the Act.<br><br>*Recommendation 20* - RSHQ, in consultation with the industry, advise the Minister on proposed content for a recognised standard for the implementation of critical control management, based on the International Council on Mining and Metals (ICMM) Good Practice Guide and ICMM Implementation Guideline.<br><br>*Recommendation 21* - RSHQ audits the effectiveness and implementation of critical controls associated with a mine's PHMPs at regular intervals, and publishes the results of these audits in its Annual Safety Performance and Health Report. |

*Objective of government action*

The key objective is to ensure critical controls are clearly incorporated as a component in the overall SHMS for all coal mines, and metalliferous mines and quarries, so that there is a clear focus on critical controls and their effectiveness.

A secondary objective is to ensure critical control failures are effectively communicated to the inspectorate and to senior officers of the corporation and that such failures require the SSE to suspend operations until the controls are made effective.

*Options*

Option 1 – Amend legislation

Option 1 proposes legislative amendments to the Mining Safety laws to require critical controls to be a component in the SHMS for a coal mine, metalliferous mine, or quarry. Minimum requirements for the identification and monitoring of critical controls and notification in the event of a failure of a critical control will be clearly established through these amendments.

This proposal responds to expert recommendations made by the BoI and the Brady Review and seeks to add critical controls to mandatory risk control requirements under the Mining Safety laws, so that there is a clear focus on critical controls and their effectiveness. SSEs and operators would be required to ensure that critical controls are effectively identified, implemented, and monitored for effectiveness. The requirements for critical controls will be enforceable under the Mining Safety Acts.

The identification and mandating of critical controls will assist SSEs and coal/metalliferous mine or quarry operators to satisfy their high-level safety and health obligations under the relevant legislation. These obligations include developing and implementing a SHMS which includes mandatory requirements such as principal hazard management plans, and any additional risk controls assessed as required at a particular coal mine. Coal mine operators also have high level safety and health obligations, including to review the effectiveness of the SHMS to ensure risk to persons from coal mining operations is at an acceptable level.

The proposed approach to require the identification of critical controls will clarify how mine operators and SSEs should ensure the effectiveness of the SHMS regarding controls considered of critical importance, and ensure they satisfy their current safety and health obligations. Requiring all coal mine operators to implement critical controls potentially adds to the effectiveness and comprehensiveness of the current risk management framework under the Mining Safety laws. It would be a new component to add to the refinement of mandatory risk management and risk controls to facilitate improvements.

While some critical controls may already be prescribed under regulation, it will be the obligation of SSEs and coal mine operators to identify all other critical controls, and how the relevant critical controls apply to the principal hazards, hazards and risks of their particular coal mining operations. Similarly, the above also applies for SSEs and metalliferous mine/quarry operators, other than in relation to principal hazard management plans.

Over time, this will help to improve how the mining industry identifies and controls hazards, and how they respond when controls are ineffective. There is also potential for significantly improving principal hazard management plans and risk management at coal mines if the requirement for critical controls is implemented across the industry. A requirement will be that principal hazard management plans include critical controls within those plans. Principal hazard management plans do not currently have a clear link to critical controls. There will be related revisions to the list of principal hazards under the CMSHR to support this.

It would be up to the mine operator and those at a mine to identify critical controls focused on elimination or engineering controls. Identification of critical controls could significantly improve

risk management at metalliferous mines, and quarries. A worker in a safety critical position at a mine could be assigned responsibility to monitor the effectiveness of critical controls. An SSE for a coal mine could be required to review and audit the effectiveness of principal hazard management plans and associated critical controls annually.

It is envisaged the legislation would describe the process to identify the critical controls, and the method by which the effectiveness of controls would be measured and monitored. The critical controls process will be based upon the ICMM guide process. The definition of critical control in the ICMM guide will also be used. As well as identifying critical controls, the ICMM guide includes how to assess their adequacy, assigning accountability for the implementation, verifying the effectiveness of critical controls in practice, and responding to inadequate performance. Similar accountability and review processes are already implicit in the Mining Safety Acts through high level safety and health obligations, and are sometimes more explicitly addressed, (for example in the CMSHA, section 64H(1)(c)).

Critical controls may be preventative (they prevent unwanted events); or mitigating (they mitigate the impacts of an unwanted event after it has occurred).

Examples of preventative controls include:

- mobile equipment brakes – where there is a fault in the braking system that would result in the brakes failing, and the design of the brake system is such that the failure will cause the brakes to apply and the mobile equipment to stop;
- shielding hot equipment components to prevent a fire in the event of oil coming into contact with hot components;
- interlocking methane monitors and electrical equipment in an underground coal mine.

Examples of mitigating controls include:

- bunding and windrows to ensure out of control vehicles cannot leave;
- automatic fire suppression on mobile equipment that activates in the event of a fire.

If both preventative and mitigating critical controls for an identified critical risk fail, the inspectorate will be notified, as this failure will be an HPI. It is proposed that SSEs also be required to notify senior officers of the corporation of the failure in line with HRO principles. It is also proposed that such a failure would be a trigger for the SSE to suspend operations until the controls are effective. The extent of the suspension of operations will depend upon which part of operations need to be suspended to achieve an acceptable level of risk in each particular scenario. It may be part of operations, or all of operations. This essentially relates to their obligations under the Mining Safety Acts (refer CMSHA, section 42 and MQSHA, section 39)

for which there are penalties for failing to discharge an obligation (refer CMSHA, section 34 and MQSHA, section 31). The inspectorate could also suspend operations under existing directives powers until the critical control has been reviewed and effectiveness of controls are established. Enforcement would be in accordance with the RSHQ Compliance and Enforcement Policy[26] framework. From 2018 to 2022, the mines inspectorate had suspended all or part of operations on average 110 times per year.

If critical controls are implemented and monitored effectively, then a reduction in the number of suspension of operations by mines inspectors, and by operators is expected.

The current HPI reporting system requires reporting on an incident rather than the reporting of the specific causes of an incident such as the failure of a risk control. Therefore, it is unknown what percentage of HPIs has resulted from risk control failures. However, if a risk control has failed and a HPI has resulted, these HPIs have been reported as an incident.

Failures should be a rare occurrence when critical controls are implemented. Any HPI reporting will be extremely important in improving safety, through learning from the failures which could have caused a serious incident or a fatality, or events that did cause a serious incident or a fatality, and ensuring controls are made effective.

Section 149 of the CMSHR which lists mandatory principal hazard management plans will be expanded to include any additional principal hazards listed in the equivalent NSW legislation. NSW also has inundation or inrush, mine shafts and winding systems, subsidence, roads or other vehicle operation areas, air quality or dust or other airborne contaminants, and fire.

The QRC suggested that requirements for critical controls appear to be better suited in a recognised standard rather than legislation. The proposed legislative amendments are to be framed as mining safety and health obligations, which are not appropriate for inclusion in recognised standards and guidelines.

[26] RSHQ Compliance and Enforcement Policy available at https://www.publications.qld.gov.au/dataset/compliance-and-enforcement-policy/resource/1c401021-3f6c-4adb-a1d4-ef3e64727442.

Impacts and benefits

| Costs | Benefits |
|---|---|
| An improved focus on critical controls is not expected to entail significant costs for any stakeholders. Operators already have mining safety and health obligations to have an effective SHMS which includes risk controls to ensure there is an acceptable level of risk during operations. The risk management and review components that will be involved with mandatory, best practice critical controls are consistent with current statutory requirements to review and ensure the effectiveness of the SHMS, so would be consistent with existing ongoing SHMS costs. The proposed changes will require critical controls as they are more robust, effective risk controls. This will provide more guidance about how to effectively meet existing general, high level requirements for the SHMS to be effective. It will therefore, also improve compliance with existing requirements.<br><br>The mines inspectorate will assist mine operators and SSEs of smaller mines with the identification and implementation of critical controls relevant to the risks and hazards at their smaller mines. This will assist in limiting any implementation costs for operators who have limited resources to identify and implement critical controls as part of their SHMS. | The proposed requirement for critical controls will help to ensure that obligation holders discharge their safety and health obligations to manage hazards and risks through the SHMS effectively, and that serious accidents (including fatalities) are prevented. |
| There may be some implementation costs for operators of smaller mines who are not already considering critical controls as part of their SHMS. However, any additional costs are expected to be minimal as they are related to obligations that already exist through requirements for an effective SHMS. Educational resources will be provided by the mines inspectorate. | SHMSs at mines will be more effective, and there will be less likely to be any compliance or enforcement action against them. Obligation holders will be more confident that they are meeting their high level safety and health obligations. |

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| An additional explicit requirement to halt work is proposed in the event of the failure of both preventative and mitigating critical controls which will result in revenue losses from lost production. This provides strong incentives to make controls effective. This is similar to existing mechanisms in the Act that would already have a similar effect. For example, the failure of a critical control would likely result in an unacceptable level of risk which requires persons be evacuated to a safe location and action be taken to reduce the risk to an acceptable level (refer CMSHA, s.31 and MQSHA, s.28). Also, directives can already be used to suspend operations (refer CMSHA, s.167 and s.169 and MQSHA, s.164 and s.166). These have been used 110 times on average per annum between 2018 to 2022.<br><br>There is no reason why widespread non-compliance with requirements for critical controls should be expected if mines are already implementing adequate controls to meet their existing obligations. Additional RSHQ enforcement costs are not expected. | |
| It is expected that there will be a small increase in reporting of HPIs in the event of failure of critical controls. Most of these types of control failures would be reported now as HPIs that resulted in an incident, regardless of how the risk controls are termed, for example failure of engineering controls, rather than critical controls. | The potential benefits are significant, if mine operators effectively implement critical controls, as this will potentially significantly reduce the number of serious accidents (which includes lives lost) over time. This will reduce the number of workers with serious injuries or fatal injuries that occur due to inadequate or absent risk controls. This will also reduce the risk of the following costs to operators if a serious incident occurs. A mine would stand to lose significant income from its temporary closure, following a serious accident (which could include a death of a worker), as an investigation occurs. Following serious incidents there have been cases of extended mine closures for months to years, and cases of permanent closure. Depending upon the profitability of a |

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| | particular mine at the time, it is not uncommon for stopping operations for a day to cost over a million dollars in revenue for the larger mines.<br><br>The cost benefit analysis is not able to model the proportion of benefits attributable to individual proposals.<br><br>Furthermore, if there was an underground coal mining disaster or other serious accident there may also be sterilisation (permanent loss) of coal resources as a result. Successful implementation of critical controls would help to ensure mines meet existing obligations to protect workers and avoid these flow-on costs from having had inadequate or absent risk controls that did not prevent serious incidents.<br><br>The Brady Review recommended that industry needs to focus on ensuring the effectiveness and enforcement of controls to manage hazards (such as elimination, substitution, isolation, or engineering). The Brady Review reported that a significant number of the controls put in place in the aftermath of an incident were administrative in nature. The majority of the fatalities reviewed involved at least one failed, or absent risk control, that could have avoided the tragedy.<br><br>Section 149 of the CMSHR which lists mandatory principal hazard management plans will be expanded to include any additional principal hazards listed in the equivalent NSW legislation. NSW also has inundation or inrush, mine shafts and winding systems, subsidence, roads or other vehicle operation areas, air quality or dust or other airborne contaminants, and fire.<br><br>There will potentially be less stopping of operations if critical controls are effectively identified and implemented, as there is less likely to be a failure of risk control, if critical controls are implemented. |

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| | Using critical controls, in addition to other elements of a SHMS, enhances clarity of current requirements to develop and implement an effective SHMS. Critical controls could also be incorporated as part of current requirements to review the effectiveness of the SHMS. |

### Option 2 – Status quo (do nothing)

Option 2 maintains the status quo and will not provide clear minimum legislative requirements relating to critical controls. It ignores expert recommendations and instead continues the reliance on existing provisions of the Mining Safety laws, which have not been sufficient to drive the necessary safety improvements. This option does not address the objectives of the government action nor the recommendations of the Brady Review or the BoI (which the government has already committed to implementing).

Maintaining the status quo will not yield any safety improvements for workers or the community. It is also likely that the current fatality and serious accident cyclical rates will remain.

### Option 3 – Non-regulatory option

Option 3 proposes that RSHQ provides information to mine and quarry operators on how to improve safety and health outcomes. This would focus on the need for industry to implement critical controls and to identify precursors to fatalities and better use these to prevent accidents and fatalities. This option would rely on industry and workers voluntarily accessing and implementing the information. It would be supported by the inspection, audit and compliance program of the regulator and be funded from RSHQ's operating budget. However, priority would be given to core inspectorate functions, such as responding to and investigating serious accidents and fatalities if these occur.

Option 3 would ignore expert recommendations and fail to remedy identified issues with the legislative framework relating to critical controls. While some improvements to the current understanding and implementation of CCM could be expected, this voluntary approach is unlikely to yield any significant positive impacts. This option does not address the objectives of the government action nor the recommendations of the Brady Review or the BoI (which the government has already committed to implementing).

Impacts and benefits

| Costs | Benefits |
|---|---|
| There may be some implementation costs for operators who are not already considering critical controls as part of their SHMS and subsequently choose to do so. However, any additional costs are expected to be minimal as they are related to obligations that already exist through requirements for having an effective SHMS.<br><br>Any cost associated with RSHQ compiling and communicating critical control education material is within current functions and is not expected to be significant. This same cost would occur under option 1. | Some operators may continue to voluntarily attempt to implement critical controls according to their understanding of any guidance material currently available about critical controls. This may result in some safety benefits at some mines, but will not be reasonably equitable across the entire mining industry.<br><br>Operators of smaller mines who may not voluntarily implement critical controls may fail to gain any safety benefits. |

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 27 | 13 | 4 | 10 |

The majority of responses to the CRIS reflected an appreciation of the intent of requiring critical controls and support general requirements for critical controls, provided they are not overly prescribed. Kestrel, Glencore, and anonymous responders commented that additional critical controls should not be prescribed “as one size does not fit all”, and critical controls need to be appropriate for the particular operations.

The intention is not to prescribe additional critical controls other than to retain those already prescribed in regulation, but rather that operators and SSEs ensure that a mine’s SHMS identify, implement and monitor critical controls to more effectively manage hazards and risks.

The proposed amendments will cover high level SHMS requirements for the integration of critical controls within the overall system, including the monitoring of critical controls.

A number of responses including those by Anglo American, Kestrel, and anonymous responders queried the reporting requirements when there has been the failure of a critical control. The proposed amendments will clarify that if the failure of a critical control is identified through

routine maintenance inspections, monitoring or audits as required under the mine's SHMS, and has not resulted in an event, or series of events that cause or have the potential to cause a significant adverse effect on the safety or health of a person, the failure of the critical control will be recorded through the review and improvement of the SHMS.

If both preventative and mitigating critical controls for a risk or hazard fail, the failure will be an HPI, and an inspector must be notified. If a critical control fails outside of the safety and health system maintenance process, it will also be reported as an HPI. If there are multiple failures of the same critical control within a 28-day period, this must also be reported as an HPI.

Operations with overlapping critical controls which in effect are backup controls should one fail, would not have to report a critical control failure, if an overlapping critical control prevented an event from being an HPI, as there would be no incident or near miss. If all overlapping critical controls failed and an incident occurred, this would be an HPI.

From 2018 to 2022, the total number of reported HPIs has been 9,852. Many would have been control failures of one type or another. As critical controls have not been part of the legislative framework, it is difficult to classify which would have been critical control failures, and which were failures of less robust risk controls.

It is not known how many HPIs have resulted in stoppages by the operator, as not all operator initiated stoppages are reported to the mines inspectorate.

The mines inspectorate suspended operations 549 times between 2018 to 2022 which is an average of 110 times per year.

QRC, Anglo American, Glencore, and anonymous responders queried how the requirement to suspend operations following the failure of a critical control will apply. The proposed amendments will clarify that an SSE will have an obligation to suspend operations, in all or part of a mine, if both preventative and mitigating critical controls fail. This suspension must remain until critical controls are made effective, and risks to persons from operations is at an acceptable level.

The MEU support requirements for critical controls provided there is input from an appropriate cross-section of workers. It is intended that critical controls will be integrated with existing legislated risk assessment processes. These processes already require input from an appropriate cross-section of workers.

The Mine Managers Association of Australia support requirements for critical controls and suggest critical controls will refocus operations on the hazards which have potential to cause significant harm.

Requirements for critical controls will not apply to small opal or gem mines. Instead, RSHQ will continue to work with small opal or gem miners to provide education and guidance about risk management.

*Final proposal*

After consideration of stakeholder feedback the final proposal is Option 1, under which it is proposed to amend the Mining Safety laws to require critical controls to be a component in the SHMS for Queensland mines and quarries. This would include minimum requirements for the identification and monitoring of critical controls, as well as notification in the event of a failure of a preventative and mitigating critical control and to suspend operations until the controls are made effective. Implementing requirements for critical controls will improve understanding and implementation of current risk management processes, and associated risk controls. Highlighting critical controls as part of the current risk management processes and SHMS will refine and improve current risk management requirements. Providing clarity to obligation-holders reduces subjectivity about the standard required to meet obligations for the purposes of compliance. This may reduce costs associated with legal proceedings by reducing the scope of issues in contention. The requirements are not expected to increase costs for the mines inspectorate who will adjust the focus of audits and inspections to include also prioritising critical controls.

Requiring critical controls is expected to be a significant measure in preventing future avoidable serious accidents including deaths of mine workers. The proposed legislative amendments under Option 1 will also assist in ensuring that critical controls are sufficiently understood and appropriately implemented, rather than allowing voluntary, confusing, or less understood critical controls at some coal mines (as noted in the BoI Report) as would be the case under Options 2 and 3. By providing minimum requirements, compliance activities (e.g. auditing) could also be used to gauge understanding and provide further assistance to facilitate improvements (i.e. by providing advice or using a directive). Whilst Option 3 is more attractive than Option 2 and would be supported by an educative approach; both Options 2 and 3 are not seen as viable because they do not achieve the objectives of government action in the CRIS and would not yield sufficient safety improvements to reduce the rates of serious accidents and fatalities.

The proposed requirement for critical controls under Option 1 will help to ensure that the existing high-level safety and health obligations are discharged effectively and that fatalities are prevented. A clearer focus on the effectiveness of risk controls and requirements for critical controls could potentially improve what is already required under the safety and health obligations. Consequently, there are no additional high level safety and health obligations, but instead a focus on the effectiveness of existing risk management processes through more

effective risk management controls through critical controls, to satisfy existing high level safety and health obligations.

## Competency for key critical safety roles

*Issue*

The statutory mine safety position holders have particular obligations, responsibilities or accountabilities within the integrated system of safety and health management. They are in positions that have a major influence on safety at a mine. Tables 5 and 6 (towards the end of this topic) summarise the main safety and health obligations of those in particular safety critical positions at coal mines which don't currently have certificate of competency requirements. The CMSHA requires the SSE to determine the competencies of those in the management structure; however, there is no formal requirement for the assessment of competency with respect to the mechanical, electrical and surface managerial roles.

Problems with the competency of some persons appointed to key safety and statutory roles, which have a major influence on the safety of a mine, are continuing at some Queensland mines. This is particularly evident in relation to engineering manager and surface mine manager roles. For instance, of the nine fatalities in the Queensland coal industry in the past four years (since 1 July 2018) six have been related to mechanical engineering activities undertaken under the responsibility of the mechanical engineering manager, both in a surface and underground context; and two fatalities were associated with work related to the surface mine manager. There is currently no legislative requirement for the assessment of competency by the BoE, or other regulatory body, to independently evaluate the competency of persons fulfilling these critical safety roles, including mechanical engineering managers and surface mine managers. Inadequate competency and supervision by those in these safety critical roles were factors involved in these tragic fatalities.

Industry has had over 20 years to properly implement its own competency standards and ensure safety critical roles are filled by competent people. However, some operators have failed to do so, despite repeated warnings from the inspectorate, including the issuing of directives to comply with the legislation. In addition, over the past 12 years, there have been some incidents of arguably blurred responsibilities at underground coal mines, where UMMs have not been perceived [in practice] to have management and control of the mine as required by legislation.

Mutual recognition arrangements for statutory certificates of competency between NSW and Queensland also further highlight the issue of the current lower standards for some statutory roles in the Queensland coal mining industry; specifically in relation to surface mine manager,

mechanical engineering manager and electrical engineering manager roles, for which certificates of competency are required in NSW but not in Queensland.

### Background to proposals about additional certificates of competency

Mine workers in key safety roles, including statutory positions, need to have the appropriate skills and knowledge to perform their duties. This includes having the competencies required for coal mining statutory positions as determined by the CMSHAC. For key statutory positions, the required competencies for key positions also include a certificate of competency or a notice issued by the BoE. These require passing a written law exam, and in the case of a certificate of competency, also passing an oral exam. Both assessment processes are administered by the BoE.

The BoE grants certificates of competency to applicants who demonstrate the appropriate level of competency. Current certificates of competency for coal mining are: first class UMM, second class (undermanager), deputy, ventilation officer, and open cut examiner. SSE notices are also issued by the BoE.

Prior to commencement of the current Mining Safety Acts in March 2001, Queensland had broader certificate of competency requirements in relation to surface mine manager, mechanical engineering manager and electrical engineering manager roles. The rationalisation of certificate of competency requirements in Queensland in 2001 was expected to see industry implement its own competency standards and ensure safety critical roles were filled by competent people; however, this did not occur. In contrast, NSW has had certificates of competency for these positions in place for approximately 40 years. In terms of safety performance, the NSW coal mining industry has only had one fatality over the past four years, compared to the nine that have unfortunately occurred in Queensland during the same period.

Not all key safety critical roles that are responsible for essential risk management in mining safety legislation are currently required to hold a certificate of competency. Consequently, there is also a need to consider current certificate of competency requirements, and how additional proposed certificate of competencies would provide improved health and safety outcomes e.g., a certificate of competency for surface coal mine managers, surface coal mine mechanical engineering managers, underground coal mine mechanical engineering managers, and electrical engineering managers.

### Current requirements for SSEs at coal mines

An SSE for a coal mine is the most senior officer at a coal mine who has significant responsibilities in relation to the safety and health of persons who may be affected by coal

mining operations. Currently, an SSE need only hold an SSE notice issued by the BoE and is not required to hold a certificate of competency.

A certificate of competency is issued based on the demonstration of extensive technical competency and years of practical experience; together with demonstrated knowledge and application of sound risk management practice and mining safety legislation. An SSE notice requires risk management competency, together with knowledge of the mining safety legislation, but not necessarily practical application of the knowledge. Since 13 March 2023, the Coal Mining Safety and Health Advisory Committee requires operational experience in addition to passing a BoE legislation exam, and risk management competencies to gain an SSE notice to qualify to be appointed as an underground coal SSE. The experience required is 5 years' experience at a coal mine in operational or technical services activities that is mining, mechanical, electrical or safety and health activities involved in coal mining. Of this, 2 years are to have been in a supervisory role, and the 2 years of supervisory experience are to have been involved in the direct supervision of coal mine workers at a coal mine who undertake the mining, mechanical, electrical or safety and health work involved in the extraction of underground coal.

This operational experience is not identical to the 5 years of practical underground coal mining experience in an underground coal mine of a standard acceptable to the BoE that is required of an applicant for a first class mine manager's certificate of competency for underground coal mines. The BoE specifies that: 2 years of the experience should be directly involved in the winning of coal during operations at the coal face; 1 year should be involved in an about underground coal mining operations that support the winning of coal; 2 years should be in a leadership role actively participating in the development and maintenance of the SHMS; 3 years should be in a senior supervisory role, including at least 1 year in the role responsible for the control and management of the underground activities when the manager is not in attendance.

The operational experience that will be required for certificates of competency for surface mine managers, and for electrical or mechanical engineering managers at surface coal mines, and at underground coal mines will be considered by the BoE closer to the time the proposed amendments requiring these new certificates of competency are considered by the Queensland Parliament.

The risk profile of an underground coal mine differs significantly to that of a surface mine, due to the presence of methane hazards. This is why a UMM (a position only required for underground mines) must hold a first class certificate of competency; and is the rationale for the proposal that SSEs at underground mines be required to hold a certificate of competency.

Even though six of the current 14 underground coal mines have SSEs who also have a first class UMM certificate of competency, some stakeholders opposed the underground coal SSE being required to have a first class certificate of competency.

### Qualifications of those left in charge during absences

The statutory positions of SSE, and for underground mines, UMM are the most senior safety and health officers in the management structure at a mine, and have greater overall control and management, than other statutory position holders.

A UMM is required to have a first class certificate of competency for an underground coal mine. However, the person left in charge of an underground mine in the absence of an UMM only needs to hold a deputy's certificate of competency.

The potential consequences from a catastrophic failure in underground coal mining negates the suggestion that this is reasonably on the basis that a deputy may only occupy the UMM position for short periods of time. Catastrophic situations can arise quickly and sometimes without prior warning. The deputy is stepping into the role generally for a period of between 12 hours and three days (being the weekend when the UMM leaves the site Friday midday and does not get back until Monday midday in several cases) and longer periods when the UMM is on extended leave. The legislation provides for, but currently does not require, the SSE to appoint a first or second class certificate holder.

A deputy is usually operating at a supervisor level on a single team, not a manager of multiple disciplines and technical requirements as required by the UMM role. A deputy's skills and knowledge is at that lower supervisory level, not across multiple technical and operational disciplines. Also, the skills and knowledge that a deputy might be lacking over a first or second class certificate holder may be crucial in relation to preventing or responding to an accident.

The absence of the UMM and those with lesser qualifications covering for the UMM was a factor present in two recent deaths of workers.

Having personnel at underground coal mines who do not hold the highest relevant competencies undertake key safety roles such as SSE and UMM in the absence of the substantive occupant of those positions means the safety and health competence and protections in such situations are potentially diminished.

The UMM being replaced when not in attendance at the mine by a person holding a first or second class certificate of competency was not opposed by stakeholders.

*Rationale for government action*

It is crucial that interventions occur at the earliest stage possible so that risks arising from a lack of competency in roles having a major influence on safety are managed. Over the past four years, eight of the nine fatalities at Queensland coal mines were related to work overseen by electrical engineering managers, mechanical engineering managers and surface coal mine managers. By comparison in NSW, where persons in those roles are required to hold a certificate of competency, there have been no similar fatalities at NSW coal mines during that time.

The BoI made findings and recommendations about SSEs and UMMs at underground coal mines, including about the qualifications of those left in charge during absences. The findings and recommendations of the BoI were made after hearing evidence from various mining industry experts.

The BoI recommended legislative amendments to ensure:

- An SSE for an underground coal mine must be the holder of a first class certificate of competency.
- A person left in charge of an underground coal mine in the absence of an UMM must hold a first or second class certificate of competency.
- A person appointed to act as an SSE for an underground coal mine, during an SSE's absence of more than 14 days, must be the holder of a first or second class certificate of competency.
- A transitional period for implementation of the above changes is provided, to avoid any disruption to mining sites while these certificates of competencies are obtained.

In the past there have also been incidents of arguably blurred responsibilities at underground coal mines where UMMs have not been seen (in practice) to have the necessary management and control of the mine. Instead, less technically qualified individuals who are more senior in the management of the mining company (e.g., the SSE) have been seen to have control and management, with the UMM relegated to a less influential subordinate compliance role. The regulator discovering that this is occurring this often depends upon the inspectorate being informed of concerns by a worker, as inspectors cannot be present at all mines, at all times. Any enforcement action is reactive and in the interim coal mine workers may have been exposed to an unacceptable level of risk. In the past, chief inspectors have issued warning letters to the operators at all underground coal mines, against UMMs being relegated to compliance roles rather than being able to control and manage underground coal mines.

Some stakeholders opposed the underground coal mine SSE being required to have a first class UMM certificate of competency and some stakeholders supported this proposal. Concerns raised included operators combining the role of SSE and UMM which would dilute both roles, conflicts and role confusion, lack of sufficiently qualified personnel and the long training periods. Anglo American suggested an SSE specific certificate of competency, rather than the current SSE notice, to cover what SSEs need to be effective.

### Recommendations of the Brady Review

The Brady Review also made a number of findings and recommendations relating to the importance of competency through training and supervision of workers. These findings also relate to the competency of those in safety critical positions at mines, especially those in safety critical positions requiring certificates of competency from the BoE.

Factors like the size and power of mechanical equipment at a mine, the complexity and risks associated with underground electrical installations, and the maintenance requirements for each, highlight the importance of appropriate mechanical and electrical engineering managers. Mechanical engineering manager (for surface and underground), and electrical engineering manager (for underground) certifications are needed to ensure there are managers with technical competencies, critical for the control of mechanical or electrical hazards or risks, and that their competence has been independently assessed by the BoE.

Views expressed at regular electrical engineering manager and mechanical engineering manager forums indicate that persons from industry in those roles support a certificate of competency being introduced in Queensland, similar to that of their peers in NSW. The establishment of such roles as statutory roles requiring a certificate of competency will also further deter SSEs directing persons to undertake certain activities associated with these roles when they have not been assessed as competent.

There is also a need to require a certificate of competency for coal surface mine managers, based on the tragic loss of lives and numbers of serious incidents at surface coal mines. This will bring Queensland into line with similar certificate of competency requirements for surface mine managers, as well as electrical and mechanical engineering managers in NSW.

Only one industry stakeholder (Kestrel) opposed certificates of competency for underground EEMs and MEMs. Only one anonymous coal mine operator opposed certificates of competency for surface mine managers, surface EEMs and MEMs.

| Source | Evidence |
| --- | --- |
| Brady Review | *Recommendation 2* - The industry should recognise that the causes of fatalities are typically a combination of banal, everyday, straightforward factors, such as a failure of controls, a lack of training, and/or absent or inadequate supervision. Internal incident investigations in mining companies must strive to capture these combinations of causal factors, and avoid simplifying them to a single cause, such as human error, bad luck or freak accidents, which has the potential to mask the underlying system failures.<br><br>*Recommendation 3* - The industry needs to focus on ensuring workers are appropriately trained for the specific tasks they are undertaking.<br><br>*Recommendation 4* - The industry needs to focus on ensuring workers are appropriately supervised for the tasks they are undertaking.<br><br>*Recommendation 6* - The industry should adopt the principles of High Reliability Organisation theory to reduce the rate of Serious Accidents and fatalities. At its most fundamental level, High Reliability Organisation theory focuses on identifying the incidents that are the precursors to larger failures and uses this information to prevent these failures occurring. Adopting a High Reliability Organisation approach will require the refinement or addition of specific competencies to both the mining industry and the regulator. |
| BoI Report, Part I | *Finding 68* - The person appointed to have control and management of an underground coal mine must hold a First Class Certificate of Competency.<br><br>*Finding 69* - It is unsatisfactory that a person appointed to have control and management of an underground coal mine in the UMM's absence holds less than a Second Class Certificate of Competency.<br><br>*Finding 70* - An SSE for an underground coal mine ought to hold a First Class Certificate of Competency.<br><br>*Finding 71* - A person appointed to act as the SSE during an SSE's absence of more than 14 days ought to hold a First or Second Class Certificate of Competency.<br><br>*Finding 73* - Implementation of legislative requirements giving effect to these findings would need to be transitional to avoid disruption to mining sites.<br><br>*Recommendation 13* - RSHQ takes steps to amend the Act to require that the person left in charge of an underground coal mine in the absence of the UMM must hold either a First or Second Class Certificate of Competency. |

| | |
|---|---|
| | *Recommendation 14* - RSHQ takes steps to amend the Act to require that an SSE for an underground coal mine must be the holder of a First Class Certificate of Competency.<br><br>*Recommendation 15* - RSHQ takes steps to amend the Act to require that a person appointed to act as the SSE for an underground coal mine, during an SSE's absence of more than 14 days, must be the holder of a First or Second Class Certificate of Competency. |

*Objective of government action*

The key objective is that key safety critical positions have the appropriate competencies, understand critical mining principles and procedures, and are assessed as competent to fulfil the requirements of the relevant position.

A secondary objective is to ensure persons acting in key statutory positions function effectively in the role while the incumbent is absent.

*Options*

Additional certificates of competency for coal mine workers in Queensland undertaking safety critical statutory safety roles would ensure that persons in these roles have sufficient experience and expertise, as determined by the BoE, and would improve safety and health outcomes (including a reduction in the fatalities at Queensland coal mines). It would also provide additional assurance that those in these safety critical roles are competent. It would better align with the equivalent certificate of competency requirements under NSW mining health and safety legislation.

This approach will enable the Mines Inspectorate's regulatory intervention to occur at the earliest stage possible in relation to these additional safety critical roles if certificates of competency are required.

### Option 1 – Amend legislation

Following consultation with stakeholders, option 1 proposes legislative amendments to the CMSHA to require the following certificates of competency for key safety critical roles to strengthen the oversight of competency:

#### Underground coal mines

- An SSE for an underground coal mine must be the holder of a first class UMM certificate of competency.

- An electrical engineering manager must be the holder of an electrical engineering manager certificate of competency (underground coal mines).
- A mechanical engineering manager must be the holder of a mechanical engineering manager certificate of competency (underground coal mines).

### Surface coal mines

- A surface mine manager must be the holder of a surface mine manager certificate of competency.
- A mechanical engineering manager must be the holder of a mechanical engineering manager certificate of competency (surface coal mines).
- An electrical engineering manager must be the holder of an electrical engineering manager certificate of competency (surface coal mines)
- An SSE for a surface mine must be the holder of a surface mine manager certificate of competency.

Following consultation with stakeholders, option 1 also proposes legislative amendments to the CMSHA to require persons left in charge of a mine to also hold a similar certificate of competency to the incumbent. Specifically, to require:

- A person appointed to act as an SSE for an underground coal mine during an SSE's absence of more than 14 days must be the holder of a first or second class certificate of competency.
- A person left in charge of an underground coal mine in the absence of an UMM must hold a first or second class certificate of competency.

The proposed amendments will ensure there are additional people with sufficient experience, expertise, status and understanding of statutory obligations working at an operational level in a wider range of key safety critical roles in the complex and hazardous mining process. The size and power of mechanical equipment at a mine and the associated maintenance requirements highlight the importance of a mechanical engineering manager. The mechanical engineering manager and electrical engineering manager certifications would ensure there are managers with technical competencies critical for the control of mechanical or electrical hazards or risks.

Requiring a surface coal mine manager to also have a certificate of competency would be consistent with the BoI's reasoning about the importance of underground coal mine managers holding a first class certificate of competency, and the recommendation that an underground coal mine manager first class certificate of competency also be held by the SSE. (As the BoI was concerned with an underground coal mine incident, it did not consider surface coal mine arrangements).

Some stakeholders did not support surface coal mine SSEs also being required to hold a surface mine manager certificate of competency and some stakeholders did support this proposal. Requiring a surface coal mine SSE to hold a surface mine manager certificate of competency will be consistent with the approach recommended by the BoI for underground coal SSEs.

Requiring a surface electrical engineering manager to have a certificate of competency would be consistent with the proposal for an underground electrical engineering manager to have a certificate of competency. This responds to recently raised support among electrical engineers for this proposal. It is also the expert opinion of coal mining inspectors that requiring electrical engineering managers to have a certificate of competency will improve safety. Electrical shocks and electrical HPIs continue to prominently occur among HPIs. Electrical HPIs could have resulted in fatalities.

Surface electrical engineering managers holding certificates of competency can reduce electrical serious incidents, and the potential for fatalities from electrical incidents. Surface electrical engineering managers are also among the safety critical positions that are tasked to oversee electrical critical controls implemented by a surface coal mine. Consequently, they are among those responsible at the frontline of safety and health at a surface coal mine, being accountable for providing oversight of the management of hazards, risks and critical controls. It is crucial that they are competent. Section 18 of the CMSHR sets out the safety critical nature of the position as it states:

> *"The duties of an electrical engineering manager include controlling and managing the following at the mine—*
>
> *(a) the design of electrical installations;*
>
> *(b) the installation and maintenance of electrical equipment and electrical installations;*
>
> *(c) electrical work;*
>
> *(d) work carried out close to electrical installations."*

Only one anonymous surface coal industry operator opposed requiring a surface electrical engineering manager to hold an electrical engineering manager certificate of competency for surface mines.

The proposal for a surface electrical engineering manager to have a surface coal mine electrical engineering manager certificate of competency has now been included in the cost benefit analysis in Appendix 4, the cost benefit analysis corresponds to half of that for a surface mechanical engineering manager certificate of competency included at Appendix 4. The

addition of the electrical engineering manager certificate of competency would approximately cost an additional $82,221 (equivalent annual value).

The proposal for a surface SSE to have a surface mine manager certificate of competency has been added into the cost benefit analysis in Appendix 4.

The proposed additional certificates of competency will increase consistency with certificate of competency requirements at coal mines in NSW, and improve safety. Safety benefits are modelled in the cost benefit analysis in Appendix 4. The cost benefit analysis is summarised below.

The introduction of certificates of competency for some existing critical safety positions will require a reasonable period of time to implement. It is proposed that a five-year transition period will provide sufficient time for workers to prepare for and undergo the required BoE examinations. Industry stakeholders argued that a lengthy transitional period will be required for workers to prepare for and complete the BoE examinations for the new certificates of competency.

If the applicant for a certificate of competency is already appointed in line with existing legislative requirements (e.g., they have required competencies, tertiary qualifications, experience, etc.), they should be well positioned to pass the requirements of the BoE for a certificate of competency. All that will be required is the successful completion of a written examination in legislative knowledge and understanding and an interview with a panel of three peers (two of whom are from industry, the third being an inspector), who will question the applicant on the competency modules required to hold the safety critical position.

The interview with the panel of peers covers practical scenarios including the management of principal hazards and catastrophic incidents. Applicants need to prove to their industry peers that they can competently and practically manage the scenarios should they eventuate.

Any persons already holding an equivalent NSW certificate of competency could apply to have their NSW competency recognised in Queensland (refer Appendix 6 for examples of potentially equivalent interstate certificates of competency under mutual recognition).

Impacts and benefits

| Costs | Benefits |
|---|---|
| $5.4 million as a present value[27] ($833,792 as an equivalent annual value) across all mining industry in Queensland | Refer to cost benefit analysis at Appendix 4 and the below summary for information about expected safety benefits.<br><br>Will ensure the competency of persons in additional safety critical positions through additional certificates of competency. |
| Refer to the cost benefit analysis at Appendix 4 and the below summary for further information. | Will ensure the competency of persons temporarily acting in key statutory positions through similar certificate of competency requirements. |

Summary from cost benefit analysis at Appendix 4

The cost associated with the new statutory positions (certificates of competency for surface mine managers, surface mechanical engineering managers, surface electrical engineering managers, underground electrical engineering managers, underground mechanical engineering managers and SSEs for underground mines and surface mines which will be performed by existing staff with new certifications) is $5.4 million as a present value[28] ($833,792 as an equivalent annual value) across all mining industry in Queensland. Underground coal represents 20 per cent of costs, and surface coal 80 per cent, with the surface coal costs associated with the surface mechanical engineering manager certificate of competency (i.e., approximately $164,441 as an equivalent annual value).

The benefits of the amendments are to improve safety and health in Queensland mines. The benefits of all proposed additional certificates of competency are supported by the expert opinion of inspectors and many of those already in existing positions at coal mines who have recently indicated support for the extra certification of competency by the BOE. The underground coal SSE having a first class certificate of competency as a mine manager was also reflected in recommendations of the BoI based on the incidents it analysed, expert evidence, including from industry and inspectors.

Due to uncertainty with key variables around baseline disaster risk, and the likely reduction in disasters and injury reductions, these have not been incorporated into a net present value

[27] **Present value** is the total value of the future benefit stream (10 years) in present day terms - this allows costs and benefits to be compared at the point where decisions are made.

[28] **Present value** is the total value of the future benefit stream (10 years) in present day terms - this allows costs and benefits to be compared at the point where decisions are made.

calculation. However, an illustrative quantification was carried out to illuminate the potential benefits relative to costs. The figures here are based on the best estimates of expert staff in RSHQ. Given a five-year transition period where only half the benefits are assumed to eventuate, some indicative values are:

- There would be a fall in injuries due to proposed amendments for existing safety critical roles now required to have a statutory certificate of competency. If this reduction in injuries was one per cent for the five-year transition period, and two per cent each year after, the benefits would be $786,785 a year for the period after transition.
- If there was a reduction in fatalities of five per cent, the annual value (not discounted) for the main period after transition would be $612,000.
- There would be a reduction in the risk of an underground coal mining disaster due to the proposals. This reduction in disaster risk would not only help avoid fatalities that carry high social costs, but also reduce the risk of mine closure and sterilisation (permanent loss) of coal resources as a result of an explosion. There is not sufficient information available on the baseline risk of an underground coal disaster and other key factors in Queensland to model these risks adequately. However, an exploratory quantification was carried out to illustrate the potential benefits. If there is a baseline disaster risk of five per cent per year, and this risk falls by 20 per cent as a result of the proposed changes, the benefits in reduced lost production and coal sterilisation would be $11.2 million a year for the main period after transition.
- Overall, this benefit scenario results in present value of $67.1 million or an annual equivalent value of $10.3 million a year. These far outweigh the costs - i.e., $5.4 million as a present value[29] ($833,792 as an equivalent annual value).

A proposal for 16 additional certificates of competency was included in the 2013 Consultation RIS. However, these did not progress, other than in relation to ventilation officers, for whom the certificate of competency requirement commenced on 11 November 2019, with a three-year transitional period. While the proposal under Option 1 for five additional certificates of competency is different to the former 2013 proposal, a summary of stakeholder concerns relating to the 2013 proposal is provided at Attachment 2.

### Option 2 – Status quo (do nothing)

This option maintains the status quo and so will not provide a legislative solution to ensure additional competency assessment by the BoE for five additional key safety critical positions at

[29] **Present value** is the total value of the future benefit stream (10 years) in present day terms - this allows costs and benefits to be compared at the point where decisions are made.

Queensland coal mines. Whilst this option is cost neutral it does not strengthen competency requirements for persons acting in the key SSE and UMM statutory positions to ensure they can function effectively during an absence of the incumbent, and does not improve safety.

There are no other options that have been identified that could address this problem.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 24 | 14 | 5 | 5 |
| 13 | 7 | 5 | 1[30] |

Some stakeholders opposed the underground coal SSE being required to have a first class UMM certificate of competency (Kestrel, QRC, Glencore, BMA and Anglo) and some stakeholders supported this proposal such as the MEU on the basis that it will improve skills and knowledge and enable independent evaluation of competence. Concerns raised included operators combining the role of SSE and UMM which would dilute both roles, conflicts and role confusion, lack of sufficiently qualified personnel and the long training periods. Anglo American suggested an SSE specific certificate of competency, rather than the current SSE notice, to cover what SSEs need to be effective.

Six of the current 14 underground coal mines have SSEs who also have a first class certificate of competency. Under the CMSHA it is already possible for the SSE to be appointed the UMM and for the roles combined - see s 60(3).

For similar reasons some stakeholders did not support surface coal mine SSEs also being required to hold a surface mine manager certificate of competency (Kestrel, Glencore and BMA) and some stakeholders such as the MEU did support this proposal. This proposal is consistent with the BoI recommendation that an SSE for underground coal mine have a first class certificate of competency.

The BoI were of the view that the fact that an SSE is not required to hold a first class certificate of competency does not sit well with the nature and extent of obligations imposed on an SSE by section 42 of the CMSHA.

[30] These responses relate to an SSE for a surface mine having a surface mine manager certificate of competency

An SSE is the most senior officer at a mine and has significant responsibilities in relation to safety and health of persons who may be affected by coal mining operations. Having certificates of competency for underground coal SSEs would ensure persons in those roles have sufficient experience and expertise as determined by the BoE and this would improve safety and health outcomes (including a likely reduction in fatalities at Qld coal mines). It would provide additional assurance that coal SSEs are competent.

The UMM being replaced when not in attendance at the mine by a person holding a first or second class certificate of competency was not opposed by stakeholders.

Only one industry stakeholder (Kestrel) opposed certificates of competency for underground EEMs and MEMs. Only one anonymous industry stakeholder opposed certificates of competency for surface mine managers, surface EEMs and MEMs.

Only one anonymous surface coal industry stakeholder opposed requiring a surface electrical engineering manager to hold an electrical engineering manager certificate of competency for surface mines.

Industry stakeholders argued that a lengthy transitional period will be required for workers to prepare for and complete the BoE examinations for the new certificates of competency. It is proposed to provide an extended transitional period of 5 years in response to this.

*Final proposal*

The final proposal is Option 1 as amended after stakeholder feedback, under which it is proposed to amend the CMSHA to include requirements for the following additional certificates of competency: underground coal SSE having a first class certificate of competency, underground electrical engineering manager certificate of competency, underground mechanical engineering manager certificate of competency, surface mine manager certificate of competency, surface mechanical engineering manager certificate of competency, and surface electrical engineering manager certificate of competency and surface SSE to have a surface mine manager certificate of competency. CMSHA amendments proposed under Option 1 would also require a person appointed to act as an SSE for an underground coal mine, during an SSE's absence of more than 14 days, to hold a first or second class certificate of competency; and require a person left in charge of an underground coal mine when the UMM is absent to hold a first or second class certificate of competency.

Option 1 provides a proactive and effective approach to take action at the training and certification level which will assist industry to ensure competency of those persons appointed to, and acting in, safety critical positions. The status quo under Option 2 is reliant on industry taking the initiative

to ensure their safety critical workers are competent, with the Inspectorate issuing directives to comply with the legislation where industry fails to do so. The continuing appointment of persons in the identified critical safety roles without any determination of competency by an independent body (as outlined under Option 1), is likely to result in ongoing fatalities in Queensland.

A legislative approach is therefore needed, given that after 20 years of the current CMSHA framework, there are still some Queensland coal mine operators that have failed to ensure appropriate competency standards and fill safety critical roles by competent people. Option 1 also needs to be considered against the backdrop of a mine continuing to be exposed to risk without key competent persons, or in extreme cases requiring that a mine suspend production which can cost a mine several million dollars (or more) per day, in lost production.

Making some additional existing safety critical positions require a certificate of competency is essentially related to additional training and certification requirements. It will not only standardise competency requirements for these roles and provide clarity for compliance, but it will also provide greater assurance to operators and SSEs who are directly responsible for ensuring those in these safety critical positions have appropriate competencies.

*Table 5 – Summary of key safety and health obligations of those in particular safety critical positions at underground coal mines which do not currently have certificate of competency requirements*

| Statutory position | Function performed by the person appointed to the statutory position | Key statutory obligations/responsibilities |
|---|---|---|
| Site senior executive (SSE) | Development and implementation of the SHMS to be followed by all at a mine. | Most senior officer at the mine in charge of resources (logistical and commercial) and safety and health, responsible to the mine operator.<br><br>In addition to the development and implementation of the SHMS to be followed by all at a mine, responsibilities reflect overall authority and control over the coal mine workers, including contractors, and all the activities at the mine through:<br><br>• developing and maintaining a management structure that assists with the development and implementation of the single SHMS including ensuring that there are particular technical competencies among those carrying out safety critical work and that there is adequate supervision and control of operations on each shift and pre-shift inspections and other regular |

| | | |
|---|---|---|
| | | monitoring of the work environment, procedures, equipment and installations at the mine<br>• being responsible for workers being trained to be competent to undertake the tasks assigned to them at the mine<br>• assigning tasks to statutory position holders and other non-specific positions, such as supervisors, only when they are competent to perform the task assigned.<br><br>Also, numerous more specific responsibilities under the CMSHR as they relate to an underground mine e.g., ensuring the design, installation and maintenance of electrical equipment and installations are safe. |
| Electrical engineering manager | To control and manage the electrical engineering activities and standards at the mine (under the direction of the UMM or in line with the management structure at the mine). | Responsibilities include the operation of all electrical energy sources, particularly flame proof and intrinsically safe equipment as used in explosion risk zones.<br><br>Responsibilities are based on relevant qualifications to technically manage electrical hazards and risks.<br><br>Assists more senior statutory positions to monitor implementation of the electrical engineering critical control plan.<br><br>Provides advice to more senior statutory positions (SSE and UMM) in relation to the design, selection, operation and maintenance of electrical systems.<br><br>Reports logistically to the SSE or maintenance manager, and to the UMM on all matters relating to the safety and health of workers at the mine. |
| Mechanical engineering manager | To control and manage the mechanical engineering activities and standards at the mine (under the direction of the UMM or in line with the management structure at the mine). | Responsibilities relate to the safe operation and maintenance of mechanical equipment.<br><br>Responsibilities are based on relevant qualifications to technically manage mechanical energy hazards and risks associated with, for example, the size and power of mechanical equipment.<br><br>Assists more senior statutory positions with monitoring the implementation of the mechanical |

| | | |
|---|---|---|
| | | engineering critical control plan.<br><br>Provides advice to more senior statutory positions (SSE and UMM) in relation to the selection, operation and maintenance of mechanical systems.<br><br>Reports logistically to the SSE or maintenance manager and to the UMM on all matters relating to the safety and health of workers at the mine. |

*Table 6 – Summary of key safety and health obligations of those in particular safety critical positions at surface coal mines which do not currently have certificate of competency requirements*

| Statutory position | Function performed by the person appointed to the statutory position | Key statutory obligations/responsibilities |
|---|---|---|
| Site senior executive (SSE) | Development and implementation of the SHMS to be followed by all at a mine. | Most senior officer at the mine in charge of resources (logistical and commercial) and safety and health, responsible to the mine operator.<br><br>In addition to the development and implementation of the SHMS to be followed by all at a mine, responsibilities reflect overall authority and control over coal mine workers, including contractors, through:<br><br>• developing and maintaining a management structure that assists with the development and implementation of the single SHMS, ensuring that there are particular technical competencies among those carrying out safety critical work and that there is adequate supervision and control of operations on each shift and pre-shift inspection and other regular monitoring of the work environment, procedures, equipment and installations at the mine<br>• being responsible for workers being trained to be competent to undertake the tasks they are assigned<br>• assigning tasks to statutory position holders and other non-specific positions, such as supervisors, only when they are competent to perform the task assigned<br>• appointing persons holding appropriate competencies to statutory positions – |

| | | |
|---|---|---|
| | | specifically open cut examiner's certificate of competency to carry out responsibilities and duties prescribed by the CMSHR.<br><br>Also, numerous more specific responsibilities under the CMSHR for surface coal mines. |
| Surface mine manager | To control and manage mining activities at the mine. | Provides technical, health and safety directions in relation to the technical control and management of mining activities (those mining activities prescribed in the CMSHR) based on practical and theoretical knowledge.<br><br>Controls and manages the overall implementation of the SHMS so that all hazards and risks associated with 'mining activities' are effectively controlled.<br><br>Controls and manages the overall monitoring of the effectiveness of the SHMS and oversees the competence of workers.<br><br>Also has specific responsibilities under the CMSHR. |
| Electrical engineering manager | To control and manage the electrical engineering activities and standards at the mine. | Responsibilities are based on relevant qualifications to technically manage electrical hazards and risks.<br><br>Assists more senior statutory positions with monitoring the implementation of the electrical engineering critical control plan.<br><br>Provides advice to more senior statutory positions (SSE and surface mine manager) in relation to the design, selection, operation and maintenance of electrical systems.<br><br>Reports logistically to the SSE and technically to the surface mine manager. |
| Mechanical engineering manager | To control and manage the mechanical engineering activities and standards at the mine. | Responsibilities relate to the safe operation and maintenance of mechanical equipment.<br><br>Responsibilities are based on relevant qualifications to technically manage mechanical hazards and risks -for example associated with the size and power of the mechanical equipment.<br><br>Assists more senior statutory positions with monitoring the implementation of the mechanical |

| | | |
|---|---|---|
| | | engineering critical control plan.<br><br>Provides advice to more senior statutory positions (SSE and surface mine manager) in relation to the selection, operation and maintenance of mechanical systems.<br><br>Reports logistically to the SSE and technically to the surface mine manager. |

## Continuing professional development

*Issue*

The Mining Safety Acts require that persons in particular safety critical roles hold a certificate of competency or SSE notice from the BoE. The importance of ensuring that these qualifications remain current was acknowledged in 2018 with an amendment to the Mining Safety Acts, allowing regulations to include requirements for holders of these competencies to undertake continuing professional development (CPD) as decided by the BoE.

Amendments made to the CMSHR and the Mining and Quarrying Safety and Health Regulation 2017 (MQSHR) in 2022 detail CPD requirements and introduce a practicing certificate scheme that will assist with streamlining and formalisation of these requirements. There was extensive consultation prior to these amendments, with the BoE consulting with industry stakeholders during 2020 and 2021. This included direct consultation with all UMMS and SSEs; the Queensland Resources Council; the Institute of Quarrying Australia; the Mine Managers Association of Australia (MMAA) and open forums with coal mine workers. The BoE also consulted through the Coal Mining Safety and Health Advisory Committee, SSE forums and mining industry conferences.

The New Zealand Mining Board of Examiners implemented its CPD scheme for those holding certificates of competency for safety critical positions in 2016, in response to the Pike River mine disaster which killed 29 coal mine workers. Also in 2016, the NSW Government introduced a practising certificate scheme based on completion of CPD for statutory position holders under NSW mining health and safety legislation.

The actions by the NSW and NZ regulators in establishing CPD schemes, and the consultation completed through the *Mines Legislation (Resources Safety) Amendment Act 2018* and before the amendments were made to the CMSHR and the MQSHR in 2022; have resulted in positive expectations and support among industry stakeholders that a similar CPD scheme will be run by the Queensland BoE for mining industry certificate and notice holders.

The MMAA has stated that it supports the introduction of the requirement for CPD and for all statutory officials to hold practising certificates. The MMAA states that whatever system of practising certificates is introduced, the competencies should be compatibly aligned in both the Queensland and NSW CPD schemes. To fully implement the practicing certificate scheme, a compliance and enforcement framework is needed. Without this framework, the legislated CPD requirements are unenforceable, and the scheme itself will be voluntary only.

*Rationale for government action*

The amendments made to the CMSHR and the MQSHR introduce CPD requirements for a person who holds a certificate of competency or an SSE notice to be implemented via a practising certificate scheme. Amendments include details about CPD activities, hours and periods. Certificate and notice holders can now apply for a practising certificate and start registering completed CPD activities.

In recent years, many holders of certificates of competency or SSE notices have supported CPD by voluntarily updating their skills and expertise (for example, through the MMAA, Engineers' Australia, and the Australasian Institute of Mining and Metallurgy) to ensure they maintain contemporary knowledge, and refresh and bolster existing competencies.

The next step in reinforcing the importance of CPD is to establish a compliance and enforcement framework for the practising certificate scheme to ensure that CPD is completed regularly in accordance with requirements.

The Brady Review and the BoI identified a lack of training and supervision as contributing factors to incidents, resulting in fatalities in the mining industry. The practising certificate scheme will help to ensure that those in particular safety critical roles maintain appropriate competency training in key CPD areas, including mining methods, emergency management and leadership, risk management, and legislation changes over time.

The issuing of practising certificates by the BoE will confirm the holder's completion of the required CPD hours. The compliance and enforcement framework for practising certificates will be integrated with the existing compliance and enforcement framework for certificates of competency and SSE notices.

| Source | Evidence |
|---|---|
| Brady Review | When examining the mining fatalities from (2000 to 2019) Dr Brady found that a total of 17 of the 47 fatalities involved a lack of task specific training and/or competencies for the tasks being undertaken. A further nine had inadequate training. These tasks were often undertaken at the direction of |

| | |
|---|---|
| | supervisors or others who were aware of these deficiencies.[31] An example of this relates to a fatality that occurred at Grasstree Mine in 2014 where a worker, who was not assessed as competent, was sent to calibrate a gas detector. The worker was unsupervised and not familiar with that area of the mine. These factors led to the worker being unaware of the presence of an irrespirable atmosphere, which led to his death.<br><br>In 32 of the 47 fatalities, supervision was required for the tasks being undertaken, i.e., they did not include routine tasks, such as driving. Twenty-five of the 32 fatalities involved inadequate or absent supervision. There were a variety of supervision issues, such as absent supervision, supervisors with inadequate knowledge of the hazards and level of risk, and supervisors who watched as workers undertook unsafe acts.<br><br>The Brady Review noted an example at Wongabel Quarry in 2006, where the supervisor observed a worker driving a loader with the bucket too high but did not intervene. A fatality occurred when the loader struck another worker.<br><br>These findings link to Brady recommendations 2, 3, 4 and 6. |
| Safety Resets 2019 | The safety reset included an online survey which received 518 responses from 110 mine sites, and 20 interviews. The four most prevalent perceptions raised from the floor by workers at resets and through the survey exercise were:<br><br>1. The importance of leadership in addressing safety issues and the impact this had on safety outcomes.<br>2. The impact of workforce casualisation and the importance of an experienced, well-trained, and permanent workforce in improving safety outcomes.<br>3. The need for improved quality of training and more frequent training.<br>4. The need for clearly defined, standardised and simplified processes, policies, and procedures. |

[31] Refer page 30 of the Brady Review available at https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T197.pdf.

## *Objective of government action*

The objective of government action is to ensure that the CPD scheme can be adequately enforced.

## *Options*

### Option 1 – Amend legislation

Changes are proposed to the Mining Safety Acts to support the CPD Scheme and the introduction of additional practicing certificates. Whilst the ability of the BoE to determine CPD for certificate of competency and SSE notice holders has been established through the *Mines Legislation (Resources Safety) Amendment Act 2018*, it is preferable to have this explicitly stated under the prescribed functions of the BoE.

As the certificates of competency and the SSE notices will function in conjunction with CPD it is proposed that the compliance and enforcement framework currently in place for these competencies will be amended to specifically include practising certificates. That is keeping a register of practising certificates; suspension, cancellation, or surrender of a practising certificate; the impact of a practising certificate being suspended or cancelled; obtaining a practising certificate by providing false information; and auditing.

#### Functions of the BoE

It is proposed that the ability of the BoE to decide the CPD requirements for practicing certificates be specifically prescribed in section 185 of the CMSHA and section 180 of the MQSHA, and for the BoE to issue practising certificates to persons who have demonstrated to the BoE's satisfaction, completion of the required CPD for the respective practising certificate.

#### Register to include practising certificates

The BoE currently keeps a register of certificates of competency, SSE notices and registration under mutual recognition, under section 193A of the CMSHA and section 185 of the MQSHA. These sections are proposed to be amended to also refer to the BoE keeping a register of practising certificates and the same information about holders, as is kept for certificates of competency. As the register currently exists, it is not envisaged that any additional costs will be incurred.

#### Consideration of suspension, cancellation or surrender for application for practising certificate

The BOE can currently consider any previous suspension, cancellation or surrender of a certificate of competency or SSE notice when deciding an application, under section 194A of the CMSHA and section 181A of the MQSHA. It is proposed that these sections be amended to

also refer to the BoE specifically being able to consider any suspension, cancellation or surrender of a practising certificate made under the Mining Safety Acts.

### False information

Section 195 of the CMSHA and section 182 of the MQSHA currently makes it an offence for a person to become, or attempt to become, the holder of a certificate of competency or SSE notice by giving false information to the BoE. These sections also enable the BoE to cancel a certificate of competency or SSE notice if it was obtained through false information and to notify the SSE or mine operator. Similarly, these sections are proposed to be amended to enable the BoE to cancel a practising certificate if it was obtained through false information and to notify the SSE or mine operator. An offence would also be required for when a person becomes or attempts to become, the holder of a practising certificate by giving false information to the BoE. The enforcement framework for attempting to become a holder of a practising certificate by giving false information will mirror the enforcement framework for the equivalent offence in relation to certificates of competency.

### Returning a practising certificate

Sections 196 of the CMSHA and 183 of the MQSHA cover the circumstances when the holder of a certificate of competency or SSE notice must return the certificate or notice to the BoE. That is, when the certificate or notice has been cancelled by the BoE, a magistrate or the Chief Executive Officer (CEO) of RSHQ or when the holder surrenders the certificate or notice. These sections are proposed to be amended to include when the holder of a practising certificate must return the certificate.

### Effect of appointment to a safety critical position following suspension, cancellation or surrender of a practising certificate

Section 196A of the CMSHA and section 184 of the MQSHA confirm that a person's appointment to a safety critical position ends on the suspension, cancellation or surrender of a certificate of competency or SSE notice. Similarly, these sections are proposed to be amended to also provide that a person's appointment to a safety critical position ends on the suspension, cancellation or surrender of a practising certificate.

It is proposed that there be amendments to sections 54, 59, 60, and 61 of the CMSHA, and sections 49 and 53 of the MQSHA, to not only require an SSE notice/certificate of competency for appointment to the respective safety critical positions, but also the respective practising certificates.

It is important to note that the practising certificate scheme has a lengthy lead in time. Stakeholders were being encouraged to register for the scheme from 2022. The regulatory amendments include a transition period of three years before the requirement to complete CPD activities becomes mandatory within the CPD period.

### Auditing of CPD completion

Holders of certificates of competency, or SSE notices, will need to lodge information about the completion of their CPD in the BoE database, to enable the accuracy of the CPD information to be verified for the granting and retaining of practising certificates.

Auditing of the completion of CPD would be conducted by internal RSHQ auditors or external auditors who may check the accuracy of details about completed CPD registered in the BoE database system by holders of practising certificates.

The chairperson of the BoE will be able to conduct a show cause process if CPD requirements have not been met, or if there is some other form of non-compliance. This process will precede any further possible compliance and enforcement stages.

### Suspension and cancellation of practising certificates

The Mining Safety Acts already have sections providing for the suspension and cancellation of certificates of competency and SSE notices by the CEO of RSHQ. The relevant sections in the CMSHA are sections 197A to 197D, and in the MQSHA, sections 186 to 189. A certificate of competency or SSE notice may be suspended or cancelled if the holder has contravened a safety and health obligation or committed an offence relating to mining safety. Appeal rights will apply to all such decisions.

These sections are proposed to be amended to provide that if a certificate of competency or SSE notice is suspended or cancelled, the associated practising certificate will also be suspended or cancelled.

It is also proposed that there be new sections added to the Mining Safety Acts providing for the suspension or cancellation of a practising certificate if CPD is not completed, but this suspension or cancellation would not also apply to the associated certificate of competency or SSE notice. A practising certificate could be reinstated if the issue that led to its suspension or cancelation was resolved. Every effort will be made to ensure that the required training is accessible to all, and extenuating circumstances will be considered by the CEO during the suspension or cancellation process.

### Associated amendments

Amendments are also proposed to the Mining Safety Acts to confirm that regulations can be made about procedural matters relating to practising certificates for holders of certificates of competency or SSE notices. This should include procedural matters for the BoE that are similar to the matters covered in the NSW Work Health and Safety (Mines and Petroleum Sites) Regulation 2014, which also cover interstate practising certificates.

### Impacts and benefits

It is estimated that 2,500 certificate of competency holders and 650 SSE notice holders are active within the mining industry. The changes to the CPD scheme currently being implemented will affect this entire cohort when they are employed as a statutory position holder in a safety critical role. This same cohort will be affected by these proposed amendments.

The CPD requirements are similar to NSW's CPD requirements for safety critical mining positions. Similarities are the requirement of maintaining/renewing a practising certificate over five-year periods, by completing similar requirements for CPD activities and hours, in order to remain in safety critical positions. The similar CPD framework and CPD hours to the NSW scheme ensures that participants are able to use one set of activities to satisfy the requirements of both schemes, in a lot of instances. The same CPD activities are acceptable across both jurisdictions in most instances. Compliance checking through audits will be similar to the approach being implemented in NSW.

The following are the costs and benefits of having a mandatory CPD scheme to improve the maintenance of competency by all certificate of competency, or SSE notice holders.

| Costs | Benefits |
|---|---|
| Approximately 2,500 certificates of competency and 650 SSE notices are currently in operation within the mining industry. The costs to the employee/employer/regulator will depend upon delivery of the training and who bears the costs.<br><br>The commencement of the Practising Certificate Scheme in June 2022 requiring the completion of CPD by workers who currently hold a certificate of competency or SSE notice largely formalised and recognised significant voluntary CPD that was already | A mandatory requirement rather than a voluntary requirement will ensure and improve the maintenance of competency of those in safety critical positions over time. |

| | |
|---|---|
| being completed. Consultation with stakeholders indicated that probably 50 to 60% of what would be required under the Practising Certificate Scheme was already being completed. Costs not voluntarily being incurred were estimated to generally be one 12 hour shift per certificate or notice holder per year. This was estimated to be around $800 per year after tax deductions. Some of the CPD hours can be completed during work hours, or on-line requiring minimal travel for those in remote operations.<br><br>Current total annual CPD costs for 3150 certificate of competency/SSE notice holders can be estimated as follows:<br><br>Opportunity cost of employee time in CPD = $208,000 (lower end annual salary) / (40 hours x 52 weeks: 2080 hours per annum) = $100 per hour.<br><br>Additional hours are 12 per annum over voluntary CPD.<br><br>Total per annum cost = 12 x 3150 x 100 = $3.78 million (approximately)<br><br>At the conclusion of the five-year transitional period, for the requirements for a surface mine manager certificate of competency, and certificates of competency for underground and surface electrical and mechanical engineering managers, the holders will need to commence requirements for CPD to maintain a practising certificate. Consultation indicates that most workers in these positions are not currently voluntarily completing CPD activities. Not many are currently members of RPEQ or Engineers Australia who conduct CPD for members.<br><br>Under the BoE practising certificate scheme document annual CPD requirements range from approx. 30 hrs for the safety critical positions at the top of the management hierarchy down to 27 or 24 hours for those lower in the hierarchy (when the stated five- | |

| | |
|---|---|
| year requirements are divided by equal CPD progress each year).<br><br>Under the NSW scheme, the Electrical and Mechanical Engineering Managers, and Surface Mine Managers are required to complete 120 hours over 5 years, or 24 hrs per year. It is likely that the BOE will require 24 hrs per year for these future certificate of competency holders, to assist with work mobility across jurisdictions.<br><br>Based upon 2 electrical engineering managers and 2 mechanical engineering managers being required per underground coal mine, there will be 56 more certificate of competency holders at underground coal mines starting from the conclusion of the transitional period from approximately 2029.<br><br>Based upon 2 surface mine managers, 1 electrical engineering manager and 2 mechanical engineering managers being required per surface coal mine, there will be 240 more certificate of competency holders at surface coal mines starting from approximately 2029.<br><br>The following is the same modelling approach as above for existing certificate/SSE notice holders, for the future 296 additional certificate of competency holders completing 24 hours of CPD activities per year:<br><br>Annual CPD costs for an extra 296 certificate of competency holders:<br><br>Opportunity cost of employee time in CPD = $208,000 (lower end annual salary) / (40 hours x 52 weeks: 2080 hours per annum) = $100 per hour.<br><br>CPD hours are 24 per annum, assuming no voluntary CPD.<br><br>Total per annum cost = 24 x 296 x 100 = $710,400 (approx.) or approximately $2,400 per worker before any tax deduction. | |

| | |
|---|---|
| There would be minimal costs for the BoE and the regulator in implementing the supporting compliance framework for the CPD Scheme. It will be undertaken within existing funding arrangements.<br><br>There are no anticipated additional staffing costs. The BoE Secretariat has continued to manage the additional workload with the current staff. Large components of the scheme are automated therefore the additional workload is manageable for staff. Additionally, it is anticipated that several other operational aspects of the Secretariat will move to online services in the next two years, further reducing demand for manual handling of applications etc. | All these mine workers will benefit from having to keep their skills and expertise up to date and in keeping with modern practices. Queensland workers will benefit from the CPD requirements being similar to the requirements under the equivalent NSW scheme. This potentially assists worker mobility across jurisdictions. |
| | CPD is a proactive approach, as the enhanced competency through CPD among those in safety critical positions has the potential to prevent some serious incidents occurring. |
| | As well as providing relevant refresher and new technology training, a CPD scheme will also contribute to the importance of leadership in addressing safety issues. Proposed areas of competence under the CPD scheme are mining methods; legislation, emergency management and leadership, health and safety/risk management. |

### Option 2 – Status quo (do nothing)

With no changes to the legislation being proposed, this option would see the CPD scheme continue to be established as planned, without the ability of the regulator to enforce the requirements. It is likely that the anticipated safety benefits of the CPD scheme will not be fully realised.

*Results of consultation*

*Ensuring integrity of the CPD scheme*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 24 | 18 | 4 | 2 |

Stakeholders were generally very supportive of a compliance framework for the completion of CPD under a practising certificate scheme.

Many of the comments from stakeholders related to operational aspects about how the BoE administers the details of the practising certificate scheme, and do not relate to the proposed amendments. These comments will be referred to the BoE.

Some operators queried whether they will be able to directly track CPD completed by their employees. Only those workers completing the CPD will be able to directly track their completed CPD through a quick response code. Employers will be able to ask employees to show CPD progress. As the BoE will keep a register of practising certificates held, together with a register of certificates of competency, and SSE notices, it will be possible for a person to check whether an employee or potential employee holds a certificate of competency or SSE notice, together with a relevant practising certificate.

The MMAA raised concerns about RTOs, and suggested that RSHQ or the BoE audit RTOs. RTOs are regulated under Federal Government legislation, and neither RSHQ nor the BoE have jurisdiction to audit RTOs. Any concerns about RTOs should be referred to the Australian Skills Quality Authority for investigation.

Although supportive of the proposal the QRC were concerned with the implications for the resourcing and operations of the BoE, particularly with regard to suspension or cancelation of certificates of competency. The QRC felt that the BoE need to be adequately resourced to undertake the additional functions. The BoE has been accepting practising certificate registrations since 10 June 2022 through its newly designed data base.

There are no anticipated additional staffing costs. The BoE secretariat has continued to manage the additional workload with the current staff. Large components of the scheme is now automated, therefore the additional workload is manageable for staff. Additionally, it is anticipated that several

other operational aspects of the secretariat will move to online services in the next two years, further reducing demand for manual handling of applications and similar tasks.

There have not been large numbers of suspensions or cancellations of certificates of competency to add to the administrative workload of the BoE. Since 2018, there have been three certificates of competency cancelled.

The QRC also felt that the CPD scheme may come at a cost to employers, particularly those with greater numbers of statutory position holders. The costs associated with the CPD scheme were assessed as minor, prior to the commencement of stage one of the practising certificate scheme on 10 June 2022. Information is provided in the costs and benefits table above.

Finally, QRC also discussed the need for companies to monitor CPD activity. This is acknowledged and it is proposed that this will be supplemented with internal RSHQ or external auditing regimes.

The MEU suggested that employers should be required to meet the costs of workers completing CPD. As this suggestion is an industrial relations issue it is outside the scope of resources safety and health legislation. It is in employers' interests to support their workers to complete CPD requirements, in order for their workers to maintain practising certificates required to remain in safety critical positions at mines, and to support their workers' competency over time.

The four submissions that were not favourable address different aspects of the proposal, for instance Professor David Cliff, an individual stakeholder, felt that "RSHQ would be better advised to invest in overseeing quality education, training and retraining processes as well as meaningful audit processes. CPD is better administered by the professional associations than a regulator. The CPD needs to apply equally to the regulator".

Whilst CPD is overseen by the BoE, CPD activities can be provided by professional associations. Inspectors will also be completing CPD requirements.

Two industry representatives felt that the current scheme was adequate and a mandated CPD scheme is unnecessary whilst another individual stakeholder felt that it was a meaningless exercise. Legislated CPD schemes are now common across high responsibility and risk vocations and a compliance regime ensures that the scheme is enforceable.

### *Final proposal*

Option 1 is the final proposal as this will see the CPD scheme currently being implemented reach its greatest potential. Option 2 will not meet the objective for government action.

## Establish site safety and health committee

*Issue*

There is a need to improve the mechanisms for safety issues to be raised by workers as identified by the BoI. Facilitated reporting of safety issues by workers is a key part of addressing this problem. Given the high participation of contractor employees in the mining workforce, the mix of employment arrangements in mining could create a risk of fragmented reporting arrangements for safety and health issues. Data shows that the number of direct workers versus those employed through a non-permanent basis, such as contractors from labour hire agencies, is increasing (refer Figure 7 - Employee versus contractor worked hours[32]). While there are obvious operational advantages and efficiencies for mines engaging contract workers such as more flexibility in the employment basis there are also a number of disadvantages. The BoI considered some of those disadvantages, potentially negatively impacting safety, include[33]:

- temporary and insecure work arrangements are associated with a higher incidence of injuries and fatalities, as well as poorer physical and mental health.
- labour hire workers are generally significantly less likely to have access to complaint mechanisms.
- due to the casual nature of their employment, labour hire workers may be afraid of raising health and safety issues for fear of losing their jobs.

This gives rise to a problem that complaints or concerns about health and safety may not be raised and addressed. This risk is increased where the operation includes non-mine employees (contractors or labour hire), due to real or perceived concerns about employment security. This concern is reflected in statements provided to the BoI,[34] which gave anecdotal evidence of contractor workers being reluctant to report safety and health issues for fear of losing their jobs.

The Brady review and the BoI outlined the need to improve the reporting culture at all levels and across all types of employment to galvanise safety culture and reduce serious accidents in the resources industry. Under-reporting and non-reporting of safety risks was one of the themes highlighted in several BoI findings from the Grosvenor incident[35]. The Brady Review highlighted that in order to reduce fatalities, the industry must move towards becoming an HRO. Part of being a HRO is having an appropriate reporting culture in which people are

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32 Dr Sean Brady, Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019, December 2019, at https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T197.pdf.
33 BoI Report II, points 11.45, 11.47 and 11.55.
34 BoI Report II, chapter 11, e.g., points 11.146 and 11.149.
35 BoI Report II, findings 85, 86, 87, 90, 94 and 95.

prepared to report errors, near-misses, unsafe conditions, inappropriate practices, and any other concerns they may have about safety. Reporting safety issues is considered paramount to moving towards an HRO.

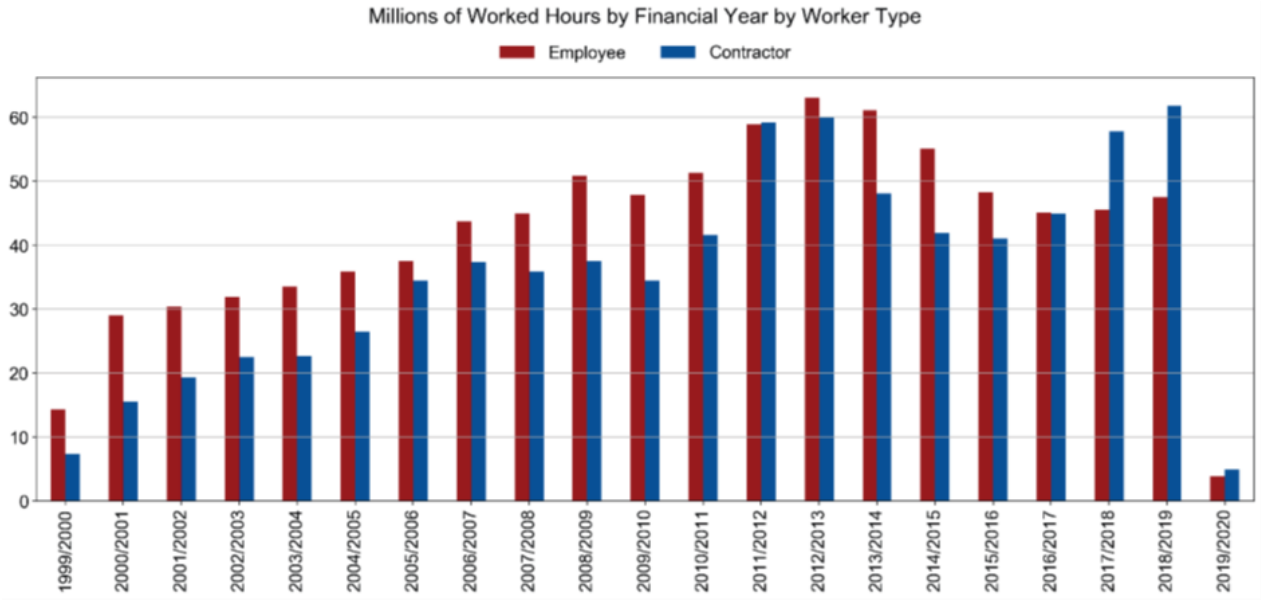


*Figure 7 - Employee versus contractor worked hours*

### *Rationale for government action*

The rationale for government action is improving the mechanisms for safety issues to be raised by workers. While the reporting of any safety issues will still be up to the individual, providing an array of mechanisms will bolster the access for reporting which can potentially make a difference for workers, including contract workers.

| Source | Evidence |
|---|---|
| Brady Review | *Recommendation 6* - The industry should adopt the principles of High Reliability Organisation theory in order to reduce the rate of Serious Accidents and fatalities. At its most fundamental level, High Reliability Organisation theory focuses on identifying the incidents that are the precursors to larger failures and uses this information to prevent these failures occurring. |
| BoI Report Part II | *Finding 85* - There is a perception among coal mine workers that a labour hire worker or contractor who raises safety concerns at a mine might jeopardise their ongoing employment at the mine. It has not been possible to assess how widespread that perception might be. However, the existence of a perception, no matter how widespread, creates a risk that safety concerns will not always be raised. |

| | |
|---|---|
| | *Finding 86* - The perception that a labour hire worker or contractor might jeopardise their employment by raising safety concerns at a mine creates a risk that safety concerns will not always be raised.<br><br>*Finding 87* - It is critical to safety at mines that all safety concerns are raised in a timely way.<br><br>*Finding 95* - There is scope to improve the mechanisms for safety issues to be raised by workers. Safety committees similar to those in the WHSA and the *Mining and Quarrying Safety and Health Act 1999* (MQSHA) are not provided for under the *Coal Mining Safety and Health Act 1999* (Qld) (the Act).<br><br>*Recommendation 27* - Consistently with Part 7 of the MQSHA and Part 5 of the WHSA, RSHQ takes steps to amend the Act to enable the formation of safety committees upon request by an SSHR or when directed by the Chief Inspector. |

### *Objective of government action*

The objective of government action is to facilitate mechanisms for raising safety issues by workers.

### *Options*

#### Option 1 – Amend legislation

Amend the CMSHA to enable a committee-based mechanism for workers and management to discuss safety and health issues related to their work sites. It is proposed that the amendments be modelled on Part 7 of MQSHA for site safety and health committees (SSHCs), as it most closely aligns with the work practices of the industry. An SSHC is a forum available to workers and their representative(s) at their discretion to ensure their safety concerns are addressed by site management. The provision for a SSHC under the CMSHA was recommended by the BoI, May 2021 (Recommendation 27). This mechanism will help to create feedback loops to management to encourage the reporting of 'bad news', consistent with HRO principles of sensitivity to operations and preoccupation with failure.

#### Overview of proposed SSHC structure

An SSHC would be requested by a SSHR, who is already required to be elected by, and represents, site workers within a coal mine safety management system. That SSHR already has powers under the CMSHA in relation to mining safety (such as the ability to halt operations) and that position is normally integrated into the safety management systems of a mine. Where an SSHR, or workers, consider that integration could be improved through an SSHC it can be requested and must be established.

When convened, an SSHC must meet at least every three months, have an equal number of worker representatives and management members, and site management must maintain and make available minutes of the meetings, provide facilities for the meetings, pay worker representatives their usual rates, and provide any necessary training. Penalties may apply where management obligations for an SSHC are not met. Related offences under the MQSHA attract maximum amounts of either 40 or 100 penalty units.

Under the proposed structure, there are no line reporting requirements other than obligations specified to notify the SSE when exercising their powers. What this means is that, unlike the safety advisory committees, the SSHC runs independently of management at the mine.

The full details of the proposed structure of the committee, including its functions and what operators must facilitate are provided in Appendix 7.

### Impacts and benefits

| Costs | Benefits |
|---|---|
| SSE will need to enable time for SSHC functions to be carried out. Experience under the CMSHA shows that, generally, there is a meeting once a month and the work that is required for those meetings would be about two hours. The impacts on time are not considered to be significant, particularly if the mine is managing safety and health matters adequately. | The SSHR is able to ensure that an appropriate safety reporting mechanism is established for a coal mining operation. |
| | The provision of an SSHC better supports the CMSHA's objectives by allowing cooperation in achieving health and safety outcomes. |

### Option 2 – Non-regulatory option

Option 2 is to encourage site operators to implement a similar reporting mechanism.

One alternative option is to take no legislative action but encourage industry to develop a committee similar to the SSHC. However, this option is not considered feasible as it does not directly address the issue of improving the mechanisms for safety issues to be raised by workers. Also, maintaining consistency across the two Mining Safety Acts is important for increased efficiency. The Queensland Government has a strong commitment to improving safety outcomes for the Queensland mining industry and to implementing the BoI recommendations. This option does not support recommendation 6 of the Brady review, of

moving industry towards becoming an HRO. Nor does this option provide certainty to the sector about the safety reporting mechanisms that would be available to them.

This alternative option would mean that having a committee would be subject to the discretion of the operator, rather than entrenching it in legislation. For those industry participants who decide to implement a committee, their approach might be subjective based on what the site operator felt was needed for the committee, which might not be best for improving safety outcomes for their workers. It is likely that contract workers, such as labour hire workers will not be encouraged to report issues in a system that was set up by their employer, based on the findings of the BoI. Consistency would be difficult to achieve under a system that is subject to the site operator's views. Considering the evidence presented In the BoI report, not facilitating a reporting mechanism such as the one offered via an SSHC, will not address the issue of access to complaints mechanisms by labour hire workers.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 17 | 5 | 7 | 5 |

Responses to the CRIS indicate that many of the 17 stakeholders who responded were not supportive of establishing an SSHC in the format proposed. A number of submitters including QRC, believe there are already adequate consultation mechanisms in place, that prescriptive legislation was not needed, or that the format for the SSHC needed changes before it could be supported. For example, Anglo American submitted that they do not support the proposal as there are already adequate consultation mechanism and that, in their current operations, the SSHR is encouraged to consult and be available to all members of the workforce as part of their duties. AMEC indicated that they would support the proposal if it was first implemented in a non-regulatory way, as well as co-designed and implemented collaboratively with the sector. Glencore submitted that there is potential for conflict with other safety processes and this can reduce the ability for personnel and individuals to express their concerns outside of the SSHC system. The MEU also indicated that they would not support the SSHC structure as proposed as they see it as having the potential to undermine the SSHR and the role they undertake.

The responses which indicated unconditional support for the proposal and were the minority, believe the SSHC would provide a useful forum for discussing health and safety issues.

Regardless, 12 months was considered an appropriate transitional period with some indicating six months or no time at all for transitioning.

### *Final proposal*

Option 1 is the final proposal. The fact that several industry participants already have alternative forums for discussing health and safety matters with workers will serve to either ensure that the transition to SSHCs will be relatively smooth or an SSHC will not be necessary if the existing forums are considered adequate and a SSHC is not requested.

## Improved data and incident reporting by operators

### *Issue*

Implementation of HRO theory provides a way for organisations that operate in hazardous conditions to reduce accidents or events of harm. One of the attributes of being an HRO is a culture of collective mindfulness, focussing on a system of continuous monitoring, with workers looking out for, and reporting, safety issues regardless of how significant they may be.[36] Consequently, improvements go toward building a high-reliability culture.[37] Under-reporting of safety and health incidents was identified as a key issue by the Brady Review which stressed the importance of a strong and open reporting culture to improve safety.

RSHQ is currently undertaking a number of internal projects to ensure that systems are appropriate for data capture and sharing. With the introduction of the enhanced incident reporting system within RSHQ, a number of gaps have been identified in the incident reporting and data capture frameworks. These issues, which are discussed in further detail below, need to be addressed to improve the collection, use and storage of data and the efficacy of incident reporting.

### *Rationale for government action*

Improvements for data and incident reporting are needed to support an HRO reporting culture where administrative burden is minimised, reported information can be easily verified, and all parties have the opportunity to learn from shared sector-wide incident information. Incident notification and reporting is a core component of effective safety regulation. Incident data and its analysis underpin the regulator's ability to share safety learnings and trends with industry,

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[36] Weick KE, Sutcliffe KM. *Managing the unexpected: Resilient performance in the age of uncertainty*., *2nd ed*. San Francisco, CA: Jossey-Bass; US; 2007.

[37] J. Cantu, J.N. Tolk, S. Fritts, A. Gharehyakheh, 'High reliability organization (HRO) systematic literature review: Discovery of culture as a foundational hallmark', Journal of Contingencies and Crisis Management (2020).

inform strategy and improve safety and health outcomes for resource sector workers. Details about the individual improvements needed are detailed below.

### Lost time injuries (LTIs) and hazards database

The Mining Safety Acts currently require the regulator to keep and maintain records about lost time injuries. Both the Brady Review and the BoI supported a move away from using LTIFR and to instead adopt serious accident frequency rate as a measure of safety performance and HPI frequency rate as a measure of reporting culture. Therefore, there is a need to change the requirements for maintaining records about LTIs.

The CEO has a legislative obligation to keep and maintain records that include a database of information about hazards and methods of controlling the hazards. It is now recognised that this database is rarely used. Additionally, industry bears responsibility for risk management and critical controls and has intimate knowledge of its mine site operations and therefore is best placed to maintain such information. Therefore, there is no benefit in the CEO having a legislative obligation to maintain this information. This is a different responsibility to that of the CEO keeping and maintaining a database of HPIs to determine requirements for intervention, where appropriate and for reporting purposes. This responsibility supports HROs.

### Oral reporting

Section 198 of the CMSHA, section 56 of the Explosives Act, section 195 of the MQSHA, and section 705D of the PG Act require specified incidents to be reported to the chief inspector/inspector either orally or written, either as soon as practicable or immediately after the incident. The petroleum and gas incident reporting framework provided for by section 706 of the PG Act and section 10 of the Petroleum and Gas (Safety) Regulation 2018 (PG Reg) requires prescribed incidents to be reported immediately by telephone. The Mines and Explosives Inspectorates and RSHQ's enhanced incident reporting system have identified issues with having an option to provide written reports and have indicated that instead an immediate oral report, would support improved safety outcomes. The current requirement to provide a written report to follow up the initial report are not proposed to be changed.

### Extension of time

Section 201 of the CMSHA, section 16 of the CMSHR and section 198 of the MQSHA set out the requirements and response required of the SSE for instances where there has been a serious accident or HPI. Part of the required action includes that an investigation be carried out and a report prepared. Under current provisions the report must be provided to an inspector within one month after the accident or incident. RSHQ is aware that there are times where it is not

possible to provide a comprehensive or meaningful report within this timeframe due to the complexity of the investigation. This can result in a report being provided to RSHQ that is not sufficient or comprehensive due to the inability to gather the relevant information and facts of the incident. Therefore, it is necessary to consider the ability to have discretionary power to grant an extension for this timeframe.

### Alignment of penalties for failure to report

Currently under the Resources Safety Acts, there is an obligation for serious accidents and HPIs to be investigated and reported to the regulator. There is an associated penalty for failure to report; however, there is no consistency across these Acts with the maximum penalties.

Under the Mining Safety Acts, the current provisions provide for the maximum penalties as shown in Table 7 (below).

*Table 7 – Maximum penalties under the Mining Safety Acts*

| Legislation | Penalty |
|---|---|
| Section 195(1) of the MQSHA and section 198(1) of the CMSHA | Failure to report accidents, incidents, deaths or diseases has a maximum penalty of 40 penalty units |
| Section195(3) of the MQSHA and section 198(3) of the CMSHA | Penalties in relation to the timing of notification of the event (primary information) which has an associated maximum penalty of 40 penalty units |
| Section 195(3B) of the MQSHA and section 198(3B) of the CMSHA | Places an obligation for the SSE to ascertain the primary information and to give it to the inspector as soon as possible. The maximum penalty is 40 penalty units |
| Section 195(4) of the MQSHA and section 198(4) of the CMSHA | Where an oral report is provided, it must be confirmed in writing within 48 hours. Failure to do so has a maximum penalty of 40 penalty units |
| Section 195(5) of the MQSHA and section 198(5) of the CMSHA | If the oral report relates to a death, it must be confirmed in writing within 24 hours. Failure to do so has a maximum penalty of 80 penalty units |
| Section 195(6) of the MQSHA and section 198(6) of the CMSHA | Where there has been a report of a reportable disease, notice must be given about the disease, and there is a maximum penalty of 40 penalty units |
| Section 195(7) of the MQSHA and section 198(7) of the CMSHA) | Where a person prescribed by regulation becomes aware that a worker has been diagnosed with a reportable disease must give notice the maximum penalty is 40 penalty units |
| Section 706(2) of the PG Act | For incidents that occur at operating plant or incidents relating to gas devices, they must be reported in the prescribed way or there is a maximum penalty of 50 penalty units |
| Section 706(3) of the PG Act | If the incident happens at a business other that operating plant and relates to a gas related device, failure to report will result |

| | |
|---|---|
| | in a maximum penalty of 50 penalty units |

Under the WHSA, there is a duty to report notifiable incidents. Failure to notify will attract a maximum penalty of 100 penalty units (refer section 38 of the WHSA). This is inconsistent with the Resources Safety Act provisions.

Therefore, there is a need to consider increasing penalties to demonstrate the importance of notification of incidents and reporting. The Brady Review highlights the importance of HPI reporting and that this data can lead to early intervention to prevent fatalities. Data can also be used to identify hazards and determine appropriate controls to minimise harm. It also allows for sharing of safety information across industry. Additionally, notifying RSHQ allows the appropriate investigating and reporting to be completed. Increasing maximum penalties is one way to demonstrate the importance that should be placed on reporting with appropriate penalties for a failure to report.

### Cessation of operations

The Mining Safety Acts do not currently require notice to be given when a mine site ceases operation. The regulator needs this information in order to have visibility of which mine sites are operating so that there is the ability to appropriately regulate all mines in operation and maintain accurate records.

### Inclusion of notification of various roles in the management of a mine to RSHQ

Currently section 65 of the CMSHA provides that the SSE must notify the inspector of any change in the management structure within 14 days. Failure to do so results in a maximum penalty of 50 penalty units. This requirement does not apply in the MQSHA and is needed (except for certain mines with four or less workers). This is important as it ensures that RSHQ has up to date information and is able to monitor effectively. This will ensure that in the event of an emergency appropriate contact can be readily made.

| Source | Evidence |
|---|---|
| Brady Review | Recommended for the regulator's role to include the collation, analysis and dissemination of incident and fatality data collected from industry to inform safety learnings and future direction for safety and health approaches for industry. It also recommended development of a system that maximises the probability of incident reporting (Recommendation 7 and 8).<br><br>A specific change recommended by the Brady Review and endorsed by the BoI was for the regulator not to place a heavy reliance on lost time injury frequency rate (LTIFR) as a predictor of serious accidents |

| | |
|---|---|
| | (Recommendation 9). |
| BoI Report, Part I | Part 1 of the BoI Report states that RSHQ rightly moved away from LTIFR and towards SAFR as a measure of safety performance. |
| HRO | A feature of HRO theory is that HRO organisations have a reluctance to simplify and therefore they are continually analysing problems by looking at data and performance metrics to ensure continual improvements and to implement proactive interventions. Another principle of HRO theory is 'preoccupation with failure' – which means actively seeking out, recognising and acting upon weaknesses in systems and learning from incidents. |
| Best Practice | Data and incident analysis is a critical element in establishing or enhancing a reporting culture. Gathering the appropriate data allows for analysis of trends and incidents that can lead to strategic and targeted interventions being put in place to prevent incidents from occurring in the future. This information can also be shared broadly to encourage learning across the sector. The importance of data and incident analysis in hazardous environments has been determined throughout empirical research. |

*Objective of government action*

Incident data and its analysis underpins the opportunity for RSHQ to share industry safety learnings and trends and inform strategic direction to improve safety and health outcomes for workers. Operators regulated by RSHQ are required by the Resources Safety Acts to notify the regulator and submit reports on specific types of incidents. This Incident notification and reporting is critical for effective safety regulation.

The government objective is to improve data and incident reporting to ensure that organisations have access to timely and relevant data and incident reporting information that will assist organisations in their transition to becoming a HRO and improve safety and health outcomes.

*Options*

Option 1 – Amend legislation

RSHQ's enhanced incident reporting system is a business transformational project that is driving change in line with the Brady Review recommendations and involves development of a new incident management system for mining safety. This will eventually be broadened to the Explosives and the Petroleum and Gas Inspectorates. Reporting systems and processes within RSHQ are being transformed into an interactive incident reporting system where information is collected and stored and used to proactively share knowledge and industry data analytics. This project includes improved processes, reporting systems, data and management, with easier access for the regulator and industry.

The proposed legislative changes are the only solutions available to support those systems and ensure that RSHQ is able to move towards best practice incident data management.

### Remove reference to LTIs and hazards database

It is proposed to remove reference to LTIs. LTIs are no longer considered to be an optimal measure and the Brady Review indicated that: 'as a measure LTIs are prone to manipulation and are a measure of how the industry manages injuries after they have occurred, as opposed to a measure of industry safety'. More accurate measures are available, including serious accident frequency rate as a measure of safety performance and HPI frequency rate as a measure of reporting culture. HPIs are already provided for under the provisions. Reference to LTIs and the hazards database should be removed from section 280 of the CMSHA and section 260 of the MQSHA. These references should be replaced with references to maintain a database of information about serious accidents. These amendments will ensure that legislation and measures used remain responsive to identified best practice.

### Oral reporting

It is proposed to amend the following legislative provisions; section 198 of the CMSHA, section 56 of the Explosives Act, section 195 of the MQSHA, and section 705D of the PG Act to require an immediate oral report. The current requirement to provide a written report to follow up the initial report will remain.

### Extension of time

It is proposed to amend the Mining Safety Acts to provide for a discretionary power to allow for extensions of time (up to 12 months) for the submission of reports (see section 201 of the CMSHA, section 16 of the CMSHR and section 198 of the MQSHA) after an incident has occurred. This will ensure reports submitted to RSHQ incorporate the complete picture.

### Alignment of penalties for failure to report

It is proposed to align the penalty provisions for failure to report under the CMSHA, the MQSHA and the PG Act with the WHSA, namely, to increase the penalties identified in Table 7 above to 100 penalty units.

It is important that information is gathered and used as an education tool to prevent further incidents across industry. With accurate data, appropriate and targeted interventions can be identified and implemented to minimise further incidents. To demonstrate the importance of

providing the information about incidents, higher penalties should be introduced and aligned across the identified Acts.

### Cessation of operations

It is proposed to amend the Mining Safety Acts to insert a new provision providing an obligation on the operator of a mine site to notify the regulator of the cessation of a site's operations. To regulate effectively and ensure that workers and sites are safe, RSHQ, as the regulator, must have oversight of the operations that have ceased operations, and this will allow accurate records to be kept of operations for reporting purposes.

### Inclusion of notification of various roles in the management of a mine to RSHQ

It is proposed to insert a new provision into the MQSHA to align with section 65 of the CMSHA in relation to notification of when there is a change in management structure. This will ensure that RSHQ can maintain accurate records and has knowledge of the management structure of a mine which assists with response where an incident has occurred. Associating a penalty with failure to do so will also demonstrate the importance of providing this information to the regulator. It is also noted that this is a requirement in a number of other jurisdictions (for example, the Northern Territory and Western Australia).

### Impacts and benefits

These amendments will have a positive impact across the resources sector and will provide the regulator with improved data collection, analysis and outputs from the data.

| Costs | Benefits |
|---|---|
| There will be minimal or no cost for this proposal | Removal of LTIs will facilitate an improved focus on serious accidents as a measure of safety performance and HPIs as a measure of reporting culture. |
| | Initial oral reporting will support improved safety outcomes allowing regulator timely access to relevant information. This will also enhance the quality of data obtained. |
| | The discretionary extension of time to provide a report to the regulator will have a positive impact on stakeholders as it provides sufficient time for the investigation to be completed and for a factual report to be provided to the regulator for future learnings and appropriate responses and interventions. |
| | Alignment of the penalty provisions for failure to report will provide an appropriate deterrent. It will ensure that with accurate data, appropriate and targeted interventions can be identified and implemented to minimise further incidents. |
| | Provision of cessation of operations information to the regulator will support effective regulation. |
| | Provision of information relating to management of a mine to the regulator will support effective regulation. |

Option 2 – Status quo (do nothing)

Legislative amendments are required to achieve the policy objectives stated above. Maintaining the status quo will mean that the Resources Safety Acts are not maintaining pace with identified reporting and data requirements. This option will not offer any improvements to reporting and data analytics and will therefore not contribute to or achieve any positive safety and health outcomes.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 9 | 5 | | 4 |

A total of 9 submissions were received. A number of proposals were supported. For example, the AEISG provided support, Glencore supported the removal of reference to LTI and the hazards database. Kestrel supported the changes relating to oral reporting, the discretionary extension of time for submission of a report, and notification of cessation of operations. The MEU were mostly supportive of the proposals, however they did raise some further proposals around how the data system to share information could be best utilised. This is outside of the scope of the current legislative proposals. Further MEU feedback in relation to notification provided to ISHR's is discussed below.

The QRC and Anglo American submissions highlighted that there was some confusion over the proposal to immediately provide notice orally rather than in writing. Submitters were concerned that the term immediately was to be incorporated in the legislation when the proposal relates to providing notice orally initially rather than in written notice. The intention is to retain the wording as it relates to "as soon as practicable" and "as soon as possible" under the CMSHA (section 198(1) and (3)) and MQSHA (section 195(1) and (3)). For example, the legislation currently provides under the CMSHA that as soon as practicable after becoming aware of a serious accident, HPI or a death at a coal mine, the site senior executive for the coal mine must notify an inspector and an ISHR about the accident, incident or death either orally or by notice. This provision will be amended only to require that the notification be provided orally. Additionally, the current requirement to follow up in writing will remain and will be required to be provided within 48 hours as per the existing provision.

Concerns about increasing and the application of maximum penalties were raised by Kestrel which felt that the current penalties were sufficient and that increasing penalties would not align with HRO. It is appropriate after reviewing comparable penalties across other legislation in health and safety that` Resources Safety Acts are amended to align to ensure that the same importance is placed on similar offences. The court will assess matters on a case by case basis and determine what the appropriate penalty is to be imposed in any given circumstances.

MEU proposed that some information should also be shared with ISHR's including the cessation of operations notification along with the changes in various roles in management notification and

the proposal for a discretionary extension of time to be provided for the submission of a report after an incident has occurred. Broadening the notification provisions to apply to further entities is out of scope of these legislative amendments. Additionally, RSHQ is bound by and therefore must give consideration to, the restrictions on disclosure of information that is collected for certain purposes. Glencore also raised concern and did not support the requirement to report to RSHQ on the cessation of operations. Glencore felt that an operation could cease for a variety of reasons and may not necessarily be related to safety issues (e.g., site access may be interrupted due to off-site flooding of regional roads). The cessation of operation requirement will not be for the purposes of obtaining a reason behind why the operation ceased. The purpose of this change is to ensure that RSHQ has up to date oversight of the operations that are in operation which will inform regulation of the industry. Additionally, Anglo American raised that the mine closure should be for a minimum time period for notification of cessation of operations to be required. The purpose of this change relates to the permanent closure of a mine.

*Final proposal*

The required changes cannot be achieved without legislative amendments. These proposals will assist RSHQ in becoming an exemplar regulator that will be able to: collate; identify; and analyse accident trends and recurrent failures in risk-management, HPIs, the extent of injuries and risk factors occurring in the sector and in incident data. This will support sharing of safety trends and learnings and inform strategy for improvements and harm prevention for safety and health for resource sector workers. The changes will not have a significant impact on stakeholders and there will be minimal associated costs involved. The proposals are to assist RSHQ in gathering improved data that can be used to prioritise regulatory activities to risk; and analysed to gauge emerging risks and implement improvements that will minimise incidents. Improved data and incident reporting can improve safety outcomes. In high-hazard industries such as the resources sector, the requirement to capture, appropriately analyse, and use that information is imperative in creating safer workplaces and protecting workers from harm.

## Information sharing to improve safety

*Issue*

RSHQ has the role of disseminating useful information and data to the industry. This information can be used to inform safety decision-making and with a view to preventing incidents and serious accidents as well as providing visibility of safety performance. The Brady Review found that HRO theory relies on incident information being actively used in a way that educates industry in the understanding of the causes of accidents and fatalities and to prevent future incidents and serious accidents.

RSHQ currently provides information to the industry through safety alerts, safety bulletins, industry performance reporting and other hazard and risk related materials in order to share safety information and learnings with industry.

However, in order to support RSHQ undertaking the important role of providing useful information and data to industry to prevent accidents and fatalities and to support industry becoming HROs, there is a need for further clarity in the legislation concerning what information can be publicly shared. Particularly in relation to HPIs and serious accident information.

*Rationale for government action*

Under the Mining Safety laws the Minister, CEO and the Chief Inspector can already publish information about commission of offences and persons who commit the offences; investigations about accidents or HPIs; and any incident or other matter that may be relevant to persons seeking to comply with their safety and health obligations. Legislation administered by RSHQ, provides that certain officeholders, including the CEO and the Chief Inspector, are provided with express powers to make public statements about specific matters. These powers are provided under:

- section 275AC of the CMSHA
- section 254C of the MQSHA
- section 126C of the Explosives Act
- section 851A of the PG Act.

Under the Brady Review the importance of the regulator facilitating the collection, analysis, identification and dissemination of data from industry was a key recommendation to inform learnings and future strategic direction for safety and health approaches of the industry. When published, this information can be utilised as a tool for harm prevention and a means to educate the wider industry. Sharing safety information can also provide transparency and confidence to the public that safety and health in the resources sector is being appropriately managed and regulated and that workers are being protected.

In order to support this approach, RSHQ needs to be able to publish information relating to the number of HPIs and serious accidents that have occurred at a mine, the name of the mine and the operator of the mine.

| Source | Evidence |
|---|---|
| Brady Review | This review recommended that the regulator should adopt the High Potential Incident Frequency Rate as a measure of reporting culture in the industry (Recommendation 11)[38]. |
| HRO | A key principle of HRO theory is the importance of establishing a reporting culture and learning from HPIs and previous serious accidents. |

*Objective of government action*

The objective is to improve sharing and publication of safety information and inform industry and support their transition to HROs that will provide improved safety and health outcomes.

*Options*

Option 1 – Amend legislation

It is proposed to amend the Mining legislation to clarify that the Minister, CEO and the chief inspector can publish information about the number of HPIs and serious accidents, the mine at which these occurred and the operator for the mine.

The Explosives Act and the PG Act enable the Minister, CEO and the chief inspector to make public statements about the commission of offences and the persons who commit the offences, and investigations under the legislation etc. It is also proposed to clarify that for the Explosives Act that the Minister, CEO and the chief inspector can publish information about an explosives incident, the name of the holder of the authority and where the explosives incident occurred. In addition, it is proposed to clarify for the PG Act that the Minister, CEO and the chief inspector can publish information about a prescribed incident (which includes a dangerous incident), the holder of the relevant authority and where the incident occurred.

Impacts and benefits

| Costs | Benefits |
|---|---|
| There will be no cost impacts from these changes. | Improved sharing of safety information and safety and health outcomes. |
| | Improved transparency across the sector. |

[38] Dr Sean Brady, Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019, December 2019, available at https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T197.pdf.

Option 2 – Status quo (do nothing)

This option will fail to achieve the policy objective and will not support the transition of industry to becoming a HRO nor will it support improved safety and health outcomes. Maintaining the status quo will fail to contribute to improved transparency across the sector and will maintain the ambiguity in relation to publication powers. The purpose of these amendments is to ensure that information can be used by industry to assist in prevention of incidents and to advance education of safety and health matters. The status quo will fail to provide further transparency or increase public confidence that the safety and health of resource sector workers is being protected.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 26 | 24 | 1 | 1 |

The majority of submissions supported information sharing generally. However, a number of submissions (6) including Glencore, Kestrel and the QRC do not support the proposal to identify the mine and operator to which the HPI and serious accident relates to. Some submissions refer to this being "naming and shaming". Glencore raised the case of *DHG v State of Qld* (2013) QSC 89, where Work Health Safety Queensland was found to be in breach of the *Penalty and Sentences Act 1992* when it published an applicant's plea and sentence on their website (when no conviction was recorded). The circumstances of this matter are very different what is proposed in the CRIS. It is not proposed to share sentencing details. What is proposed is to share details relating to HPIs and serious accidents – which aligns with HRO theory.

The Resources Safety Acts currently contain information sharing provisions which enable the sharing of information that may identify persons. The CRIS proposal is to provide clarification about what identifying information can be shared and in what circumstances it will be shared. The purpose of sharing information more broadly is to align with HRO theory. Consultation will be undertaken on a draft Bill and prior notification will be considered in developing the provisions for the Bill. For instance, it is proposed that personal information may also be released when reporting a serious incident or accident however, this will only occur in specific situations and the person will receive a minimum of 48 hours' notice of the intent to publish (or a shorter period with the person's consent). This will not apply where the information is already in the public domain (i.e. the Queensland Police Service has disclosed the name of injured persons). The requirement to only publish information where it is in the public interest will continue to apply.

*Final proposal*

The above amendments to the Resources Safety Acts identified in Option 1 are the final proposal. They will clarify the publishing of information provisions, will enable improved sharing of safety information and support improved safety and health outcomes. The Brady Review indicated that reporting of HPIs should be used as a measure of the reporting culture in industry rather than a measure of level of safety in the industry. The report also indicated that HPI reporting should be encouraged to ensure early warning signals of impending incidents and fatalities are captured and disseminated. HROs actively seek out these near miss signals, which are typically precursors to safety failures. Sharing safety information relating to HPIs and serious accidents will provide greater transparency.

# *Modern regulatory enforcement*

Contemporary and effective legislation is critical to ensure continuous improvement as it underpins the regulator's monitoring and enforcement activities. Changes to the safety framework also need to consider the effectiveness of compliance and enforcement tools currently available under the four Resources Safety Acts. Many of these tools have remained largely unchanged since the introduction of the respective Acts and have not kept pace with those available under comparable, and more contemporary, safety and health legislation (e.g., the WHSA and resources health and safety laws in other key mining states such as NSW and WA).

## Enforceable undertakings

*Issue*

Enforceable undertakings (EUs) are tools used by regulators throughout the world and at a domestic level they are used in both Commonwealth and state government departments as well as being used by private organisations. They are used to remedy breaches against legislation in a versatile and flexible manner to achieve effective outcomes. RSHQ currently has a number of available options within the compliance toolkit to promote compliance. These include a mixture of educational, deterrent, coercive, punitive, and statutory powers.

As part of punitive and deterrent measures, RSHQ can (through the WHS Prosecutor) pursue prosecution where it is in the public interest to do so and there is sufficient evidence. One of the issues with prosecution is that it can be a lengthy and costly process and sanctions that the court can impose are limited. In contrast, EUs offer flexibility to achieve a greater range and variation of outcomes that can lead to lasting improvements within the organisation and more broadly across the resources sector, whilst also ensuring accountability of relevant obligation holders. EUs can also allow an organisation to spend money on complying with the EU through measures that will have more direct and immediate positive impacts for the safety and health of their workers rather than costly and lengthy litigation costs for court proceedings.

EUs provide an opportunity to resolve compliance matters where a sanction or prosecution may not be appropriate or achieve the desired outcomes, be counter-productive or not in the public interest. To be an effective regulator, RSHQ must continually improve its compliance toolkit in order to achieve improved safety and health outcomes.

*Rationale for government action*

The introduction of EUs across the Resources Safety Acts will provide a flexible, responsive, cost effective and tailored compliance alternative and can provide a better overall regulatory outcome. They are proven in their efficacy and operate successfully and effectively across all Australian jurisdictions and in multiple regulators' portfolio legislation; including the Queensland WHSA. The introduction of EUs will support RSHQ in achieving better safety and health outcomes for the resources sector whilst strengthening the compliance toolkit.

EUs as an alternative to prosecution will provide quickly implemented compliance responses and outcomes for affected workers and their families. EUs allow the company or individual to acknowledge issues identified in relation to an alleged contravention. These undertakings allow for tailored compliance outcomes that ensure persons take responsibility for failing to meet their obligations.

*Objective of government action*

The objective is to ensure that there is range of compliance approaches available which will provide flexibility and ensure a tailored compliance response to suit individual circumstances. This will provide optimal safety and health outcomes for the resources sector.

*Options*

Option 1 – Amend legislation

This option will introduce EUs under the Resources Safety Acts to align with the EU approach taken under the WHSA. Guidelines governing the use of EUs will be established outside the legislative framework. It is not intended that EUs would be available in relation to serious accidents resulting in a fatality, or for circumstances that amount to industrial manslaughter. An EU is not an admission of guilt.

Once an undertaking is accepted, the organisation will be obligated to carry out the specific activities outlined in the undertaking. Undertakings will be published on the RSHQ website and will form part of the compliance history of the organisation whilst also being used as an educational tool for other organisations.

Undertakings are voluntary and neither a person nor the regulator can be compelled to make an undertaking; however, the regulator has discretion as to whether or not the undertaking will be accepted.

The relevant part in each Act will outline that an EU can be initiated by an obligation holder or RSHQ. When initiated by an obligation holder, the EU can be accepted by a chief inspector-excluding where there has been a fatality or where there has been an industrial manslaughter offence. RSHQ will develop and publish guidelines that state situations for which an EU might be employed, the potential subject matter for an EU and other procedural elements. It is anticipated that an activity under an EU may be for company office holders (including board members, company executive and/or statutory obligation holders) to attend meetings with RSHQ officers to provide updates (via presentation) on the outcomes of operator investigations and corrective actions at a company and site level. Other potential activities/undertakings under an EU may be that obligation holders prepare, publish or share information with industry in other formats lessons from incidents; or to invest in research and development into controls relevant to subject incidents.

### Impacts and benefits

The number of people impacted will vary as it will be dependent on the number of breaches of the legislation, whether the circumstances are appropriate for an EU, and whether the undertaking is accepted by the other party.

| Costs | Benefits |
|---|---|
| The regulator will incur some minor administrative costs in developing the guidelines that support the EU process along with some monitoring and compliance costs once an EU is in place; however, this can be absorbed by the existing RSHQ funding. | EUs will offer an opportunity for tailored compliance outcomes and provide flexibility in solutions that cannot be achieved through other processes, such as court sanctions. |
| | EUs allow investment into organisational and safety changes that will directly improve safety and health outcomes providing longer lasting benefits |
| | EUs can provide longer lasting benefits through ongoing commitments to compliance. |
| | EUs can be a more effective and timely solution when compared to costly legal proceedings for both the regulator and the organisation. |

### Option 2 – Status Quo (do nothing)

Under this option, there will not be a strengthened enforcement and compliance toolkit and an EU framework will not be established within the Resources Safety Acts. This option will not offer any benefits to the resources sector.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 25 | 21 | | 4 |

A significant number of respondents supported the introduction of EUs under the Resources Safety Acts and these included both industry stakeholders and unions. The Bulloo Shire Council submitted that "EUs are a great tool and should be used at every opportunity as whole of organisation is required to change whereas prosecution rarely sees the changes required at the worker levels. Fines paid and organisations move on, EU with the conditions applied make meaningful changes." The MMAA also highlighted the advantage of having EU's to the broader community in such that the financial contribution made would have broader social benefits in contrast with a prosecutorial penalty. Examples of this can be seen across those jurisdictions that have existing EUs in place. The QRC also discussed how EUs can be a beneficial tool and they highlighted that "EUs allow for the resolution of compliance matters where a sanction or prosecution may not be appropriate and allow companies to spend money on complying with the EU through measures that will have more direct and immediate safety outcomes rather than costly court litigation." There was some confusion by some stakeholders who believed that EUs already existed in some form under some of the Resources Safety Acts. The intention of this proposal is to adopt EUs into the Resources Safety Acts. RSHQ holds responsibility for the administration of these Acts and therefore to effectively administer EUs within the resources industry, these Acts must contain the relevant authority.

Other respondents, including the QRC, raised concerns about the lack of detail provided on how an EU will be determined and what would happen in a range of potential scenarios. These details were not included in the CRIS as the proposal relates to establishing the legislative framework for EUs. Guidelines to support the legislative framework will be developed separately. Feedback provided in the CRIS will be considered in the drafting of these guidelines. The development of appropriate guidelines for EUs within RSHQ will also be informed through consultation with other jurisdictions with existing and well-established EUs in place. Broader consultation will also be considered as the development becomes more advanced. Kestrel provided in principle support, however felt that EU's should be applicable to all fatal incidents except those where gross negligence is proven. They also proposed that EU's would need to work in conjunction with a change to allow a person to be immune from prosecution if they provide evidence, that may be incriminating, following a serious incident. Kestrel highlighted the importance of ensuring natural justice was a component of the EU process. Anglo American

submitted that there should be no limit on what may be covered by an EU. On this point, Glencore also submitted that an EU should be available where any major incident occurs where there are discernible learnings for industry from the facts of the event and proposed corrective actions arising from the incident investigation that can be implemented for the benefit of the organisation involved, its workers and the broader industry. RSHQ is not proposing to make EUs available where a serious accident causes a death or where the circumstances amount to industrial manslaughter. It is noted that a number of well-established EU models in health and safety across jurisdictions do not extend to these types of incidents due to their seriousness. RSHQ will incorporate natural justice elements into the guidelines and process. EUs are a voluntary process. The guidelines and framework will be informed by the WHSA which provides that:

- The giving of an undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.
- No proceedings may be taken for a contravention or alleged contravention against a person if the undertaking is in effect in relation to that contravention or the undertaking has been completely discharged.

Anglo American also asked if there would be a cap on expenditure associated with an EU. A cap is not currently proposed which is consistent with other jurisdictions currently with EU's.

*Final proposal*

This proposal received majority support and therefore the final proposal is to include EUs under each of the Resources Safety Acts. This will allow the regulator to enter into legally binding agreements with mine operators and authority holders to undertake far reaching improvements for safety and health management. This will offer an alternative to having the matter decided through legal proceedings and can achieve long term sustainable improvements and significant benefits–- not only to the immediate workplace and workers, but potentially the industry as a whole. Guidelines will be developed using best practice and considering feedback from stakeholders provided though this consultation process. These undertakings are voluntary in that a person cannot be compelled to make an undertaking. The regulator has discretion as to whether or not the undertaking will be accepted. EUs provide a graduated approach to compliance, allowing tailored compliance approaches while also reserving the right to pursue enforcement action in the event there is a failure to comply with the undertaking.

An EU is not an admission of guilt. Once an undertaking is accepted, the organisation will be obligated to carry out the specific activities outlined in the undertaking. Undertakings will be published on the RSHQ website and will form part of the compliance history of the organisation whilst also being used as an educational tool for other organisations.

## Court orders

### *Issue*

The traditional sanctions of fines, custodial sentences and limited court orders currently provided for under the Resources Safety Acts are not always effective in realising improved safety outcomes and enhancing community confidence. A fine on its own may have little impact on influencing future improvement; however, a fine in combination with an order that requires the offender or their workers to undertake a specific training course may have a more tangible future safety outcome.

The value of sentencing options is acknowledged in other regulators' enforcement frameworks, such as those based on the national model WHSA, which typically provide a broader range of options, including various types of orders that may be made by the court. The basis for the national model WHSA providing the court with a wider array of sentencing options is noted in the First Report[39] prepared for public consultation on the development of the national model WHSA, which stated:

> "*We conclude that the overall objectives of OHS regulation are best served by providing a wide range of sentencing options when there are convictions for breaches of duties of care. Gunningham and Johnstone have observed, in relation to corporate sanctions, a combination of measures will yield the best results in terms of achieving the overall goal of reducing the incidence of contraventions and hence the incidence of work-related injury and disease.*"

### *Rationale for government action*

The WHSA includes a variety of court orders including adverse publicity orders, costs relating to storage or disposal of a forfeited thing, injunctions, orders for restoration, WHS project orders, court orders relating to enforceable undertakings, court-ordered undertakings and training orders. There is also an offence for failing to comply with an order made by the court.

Additionally, NSW and WA resources safety and health legislation, which are also based on the national model WHS laws, have largely comparable court order provisions to those of the WHSA, with the exception of injunctions, which are not replicated under the WA legislation. By comparison, the enforcement tools currently available under the Resources Safety Acts, particularly in relation to sentencing for offences, are not as comprehensive or potentially

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[39] Australian Government, National review into model occupational health and safety laws first report, October 2008, available at https://www.ag.gov.au/sites/default/files/2020-03/national_review_into_model_ohs_laws_firstreport.pdf.

effective as those available under other safety and health related regulatory frameworks (such as those available in other major mining states (i.e., NSW and WA) and in relation to general WHS matters in Queensland under the WHSA).

Under the current Resources Safety Acts, court orders are limited to costs (mainly investigation and prosecution related), damages (for reprisal) and forfeiture. There is also inconsistency across the Resources Safety Acts, with court orders for the recovery of unpaid fees and court orders for the suspension or cancellation of authorisations provided for under the Mining Safety Acts, but not under the Explosives Act or the PG Act.

This raises questions regarding why there are fewer sentencing options available to the court in relation to resources safety and health matters in Queensland. Given the significant impact a fatality or serious accident can have on a worker, their family, friends and the community, it is incongruous and difficult to justify that lesser options be available to the court in relation to sentencing safety and health matters relating to Queensland's resources sector.

A broader range of court orders in the Resources Safety Acts, comparable to those under the WHSA and the resources safety legislation of NSW and WA, would allow a court to tailor sentencing to achieve a better balance between increasing compliance, improving safety outcomes; and just and appropriate sanctions. A similar approach of having a range of orders available to the court for sentencing is also used under a range of other laws, including the *Environmental Protection Act 1994* and the *Fair Trading Act 1989*.

While industry could, and likely would, undertake additional measures for improving safety following a fatality or serious accident – a reliance on voluntary actions alone is not considered sufficient or appropriate. It does not address the current legislative imbalance in relation to the Resources Safety Acts when compared to general WHS and key interstate resources safety and health laws. Giving these actions the force of law in the form of a court order strengthens accountability for implementing these actions and may enhance public confidence that the legislative framework can deliver community expectations of justice. The only way greater alignment can be achieved is through amending the Resources Safety Acts.

### *Objective of government action*

The key objective is to allow the courts to apply the most effective and appropriate punishment to deter future non-compliant behaviour. The aim is to ensure the compliance and enforcement tools available to the court in relation to sentencing for offences under the Resources Safety Acts are more comparable with those available under other contemporary safety and health frameworks, particularly in relation to court orders.

A secondary objective is to enhance deterrence, encourage meaningful action by an offender, be more targeted, and allow the court to impose a more proportionate response, thus enhancing safety outcomes consistently across the resources sector.

*Options*

Option 1 – Amend legislation

Amend the Resources Safety Acts to broaden court order provisions, so these are more consistent between the Acts and are more comparable to those available under other contemporary safety and health frameworks such as the WHSA. The proposed amendments work within the current legislative framework for resources safety without replicating the WHSA provisions, preserving the necessary distinctions between the frameworks that ensure the Resources Safety Acts' appropriateness to the high hazard industries to which they apply. Specifically, this option would include the following additional court orders under the Resources Safety Acts:

- **Adverse publicity orders** can be an effective deterrent for an organisation concerned about reputation. Such orders can draw public attention to a particular wrongdoing and the measures that are being taken to rectify it. For instance, the court may order an offender to publicise the offence or notify a specified person or specified class of persons of the offence, or both. The costs associated with an adverse publicity order is to be borne by the offender.
- **Costs orders** relating to storage or disposal of a forfeited thing would enable RSHQ to recover reasonable costs of storing and disposing of a thing that has been seized (and forfeited) to prevent it being used to commit an offence against the relevant Act.
- **Costs orders** relating to contravention of a court ordered undertaking could include that the person pay the costs of proceedings and pay RSHQ's future costs in monitoring compliance with the undertaking.
- **Injunction orders** relating to a legal proceeding would allow a court to issue an injunction requiring a person to stop contravening the relevant Act if they have been found guilty of an offence against it. This power can be an effective deterrent where a penalty fails to provide one.
- **Orders for the recovery of unpaid fees** under the Explosives Act and the PG Act, to align with those already available under the Mining Safety Acts.
- **Restoration orders** would allow the court to order an offender to take steps within a specified period to remedy any matter caused by the commission of the offence that appears to be within the offender's power to remedy.
- **Safety project orders** would allow the court to make an order requiring an offender to undertake a specified project for the general improvement of resources safety and

health within a certain period. The order may also specify conditions that must be complied with in undertaking the project.

- **Suspension or cancellation orders** under the Explosives Act and the PG Act, relating to authorisations under those Acts (e.g., such as explosives authorities and gas work licences and authorisations). Comparable orders enabling the court to order the suspension or cancellation of a certificate of competency or SSE notice are already available under the Mining Safety Acts.
- **Training orders** would allow the court to make an offender take action to develop skills that are necessary to manage safety and health effectively. The court may also make an order requiring a person to undertake, or arrange for workers to undertake, a specified course of training.
- **Undertaking orders (enforceable)** relating to the contravention of an enforceable undertaking – these would allow the court, in addition to imposing a penalty, to direct the person to comply with the undertaking, or to discharge the undertaking. The court would also be able make any other order it considers appropriate in the circumstances.
- **Undertaking orders (court-ordered)** would allow the court (with or without recording a conviction) to adjourn a proceeding for a period of up to two years and make an order for the release of the offender on the offender giving an undertaking with stated conditions.

This option would also amend the four Resources Safety Acts to make it an offence for a person to fail to comply with an adverse publicity order, restoration/remediation order, safety project order or training order without reasonable excuse (maximum penalty—500 penalty units). In addition, provide that a person may be prosecuted for the original offence if the person does not comply with a court-ordered undertaking and provide that if a person does not comply with an injunction, they may be prosecuted for the contravention they have been ordered to cease.

### Impacts and benefits

Option 1 could potentially impact any individual or corporation in the coal mining, mining and quarrying, explosives, or petroleum and gas sectors. However, any impact could only occur in relation to a prosecution (i.e., for non-compliance with an obligation/requirement under one of the Resources Safety Acts) and only when an order is made by the court – this would typically be in relation to the sentencing of an individual or corporation by the court.

| Costs | Benefits |
|---|---|
| There are no direct monetary costs to business, the community or government associated with this option. | Expected to be beneficial in promoting improved safety outcomes and enhancing community confidence by equipping courts with a wider array of sentencing options. |

| | |
|---|---|
| Potential costs could arise because of an order made by the court - i.e., the costs associated with complying with the order. However, this would be determined by the court and would only apply where an offence has been committed. | Gives the court flexibility for making a combination of orders to enable better targeted and more proportionate responses. |
| | Provides for appropriate sanctions for failing to comply with an order of the court. |

Option 2 – Status quo (do nothing)

Under this option, no legislative amendments would be made, meaning the court would continue to be constrained by the existing limited sentencing options under the Resources Safety Acts.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 8 | 5 | 2 | 1 |

Eight (8) submissions addressed this proposal in the CRIS (which recommended option 1) and the responses received were mixed:

- 2 stakeholders (Glencore and MEU) supported this proposal
- 3 stakeholders (AEISG and 2 anonymous industry stakeholders) supported this proposal in principle or supported parts of it
- 2 stakeholders (Anglo American and MMAA) did not support this proposal
- the remaining stakeholder (Kestrel) provided a response that did not confirm if they support or don't support this proposal.

Those that did not support this proposal, or parts of it, raised concerns about the courts making adverse publicity orders against individuals as well as the use and increase to penalties. RSHQ notes, whilst in a prosecution RSHQ or the WHS Prosecutor can make submissions relating to penalty and/or orders to be made, this proposal for court orders intends that the court will have the discretion to decide the type of court order, or combination or orders, where the court considers it to have the best remedial or deterrent effect for that particular case. Also, any increased penalties 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. The maximum penalties proposed are based on existing penalties. In relation to the proposal to

introduce suspension or cancellation orders, AEISG raised that it is critical to ensure that any intention to suspend or cancel authorisations under the Act should be based upon a submission (or advice) from the Explosives Inspectorate of RSHQ. As noted earlier, RSHQ or the WHS Prosecutor can make submissions relating to penalty and/or orders to be made by the court (and therefore there will be input from the Explosives Inspectorate).

The MMAA raised the safety performance of the NSW coal industry in comparison to Queensland, and stated that increased court orders cannot be directly attributed to penal regulatory enforcement as there have been no prosecutions in NSW for some years. Whilst the safety performance of the NSW coal industry cannot be directly attributed to a wider variety of court orders, the value of sentencing options is acknowledged in other regulators' enforcement frameworks, such as those based on the national model WHSA. Workplaces in Queensland that are subject to the WHSA are also already subject to this wider variety of court orders.

Increasing the range of court orders available under the CMSHA (and across the Resources Safety Acts overall) will also enhance deterrence, encourage meaningful action by an offender, be more targeted, and allow the court to impose a more proportionate response, thus enhancing safety outcomes consistently across the resources sector in Queensland.

Anglo American and an anonymous industry stakeholder also suggested that the value of any safety project orders or training orders should be limited to a monetary threshold of $150,000, which is the civil monetary jurisdiction of the Magistrates Court. However, this proposal is intended to align with the existing framework for court orders in the WHSA. The WHSA does not explicitly provide a monetary threshold for safety project or training orders, and it also doesn't alter the existing prescribed limit of $150,000 for the jurisdiction of the Magistrates Court (under the *Magistrates Courts Act 1921*).

### *Final proposal*

The final proposal is Option 1, to amend the Resources Safety Acts so that a court be empowered to make orders including adverse publicity orders, costs orders relating to storage or disposal of a forfeited thing, costs orders relating to contravention of an enforceable undertaking (including costs of proceedings and future costs for monitoring compliance), injunctions, restoration orders, project orders (to undertake a specific project for improving resources safety and health), court-ordered undertakings (i.e. defendant released on the giving of a court-ordered undertaking) and training orders.

These changes will enable courts to use whichever order, or combination of orders, are considered by the court to have the best remedial or deterrent effect in particular cases. A new

offence for failing to comply with an order made by the court is also proposed to ensure non-compliance with court orders can be appropriately addressed and a penalty of 500 penalty units is proposed. This penalty is consistent with that under the WHSA.

It is also proposed to amend the Explosives Act and the PG Act to provide for court orders about the recovery of unpaid fees and to enable the court to order the suspension or cancellation of authorisations under those Acts.

Collectively, these changes are expected to enhance safety outcomes as traditional sanctions in combination with proposed additional court orders have been shown to enhance deterrence, encourage meaningful action by an offender, be more targeted and permit the court to impose a more proportionate response. They also give the courts more scope to tailor sanctions to deliver community expectations of justice. Option 2 (status quo) is not considered feasible as it fails to address the problem and goes not align with the objectives of the government action.

## Directives

*Issue*

Under the Resources Safety Acts, RSHQ inspectors and other officials can issue a range of directives, remedial action notices and compliance directions (hereafter collectively referred to as 'directives') that generally require the recipient to take action by a stated date or refrain from taking certain actions.

Directives are a key compliance and enforcement tool used by RSHQ inspectorates; however, issues have been identified with the existing legislative frameworks under the Mining Safety Acts in relation to the efficient and effective administration of directives, limitations relating to directives for engineering studies, as well as the current reactive nature of directive powers concerning contraventions of the Explosives Act.

The directives frameworks under the Explosives Act and the PG Act provide a simple three directive approach which is largely consistent with the approach under the WHSA (i.e., relating to non-urgent remedial actions or improvements; dangerous situations requiring immediate action; and relating to the preservation of incident sites).

In contrast, mines are often very complex operations with unique health and safety risks when compared to other workplaces. Accordingly, the frameworks under the Mining Safety Acts provide for a broader range of specialised directives. As a result, there is some legislative ambiguity surrounding the operation of directives, particularly in relation to when a directive is deemed completed/complied with, who makes that determination (i.e., the mine operator or

the regulator), and to what level/standard is considered appropriate. An example of this concerning a directive to review a mine's SHMS (or a principal hazard management plan for a coal mine) is that there have been occasions where a mine operator has reviewed and made changes to their SHMS as instructed in a directive but asserted the changes need not be verified by an inspector as there was no legal basis for this. A directive and the subsequent action to address it are both required to be recorded in the mine record, and so can be reviewed by inspector after the fact. However, providing a clear legislative mechanism for verification by an inspector prior to a directive being deemed completed would be a more efficient way of managing a directive (unless a directive is stayed, varied or set aside by the Industrial Court).

In addition, the directive powers under section 172 of the CMSHA and section 169 of the MQSHA enable the chief inspector to give a directive requiring the operator to provide an independent engineering study about risks arising out of operations; or the safety of part or all of any plant, building or structure at the mine; or a serious accident or HPI at the mine. This information can help to identify casual factors in relation to a serious accident or HPI. The term 'engineering study' is not defined and therefore, can be limiting as other types of independent expert reports may be more appropriate in particular circumstances. A report by a risk specialist may for example be more appropriate than an engineering study in identifying risks arising out of operations and/or identifying causal factors in relation to a serious accident or HPI at the mine.

A further issue concerns the power to give a directive for allegedly contravening the Explosives Act, which is currently reactive. It only applies if it is reasonably suspected that a person is contravening, or has contravened, a provision of the Explosives Act. In contrast the Mining Safety Acts, and the PG Act feature a more proactive approach. Under the Mining Safety Acts a directive can be given if an inspector reasonably believes a risk from mining operations may reach an unacceptable level. Under the PG Act a directive can be given if an inspector reasonably believes a person is involved in an activity that is likely to result in a contravention.

### *Rationale for government action*

Some elements of the current directives frameworks under the Mining Safety Acts, particularly relating to the review of a SHMS and reducing risk, are causing confusion between the regulator and industry. From an operational perspective, there is uncertainty by inspectors and operators at times regarding which type of directive is the most appropriate to give in relation to a particular situation as both are related to managing risks. The legislative ambiguity surrounding these types of directives, particularly in situations where operations are suspended, unnecessarily increases the risk of legal proceedings being needed to resolve the ambiguity and has the potential to detract from the key objective which is to remedy the safety issue. Previous attempts

to improve the understanding of directives using an educative approach did not yield the intended outcome, as evident by the continued confusion and legal challenges.

The directive to provide an independent engineering study under the Mining Safety Acts is also too limiting because it does not clearly apply to reports from other experts as relevant or appropriate for the circumstances. In relation to a serious accident or HPI at a mine, an expert report from an independent risk expert, medical doctor, hygienist, etc. may be more appropriate (under the circumstances) than from an engineer.

In relation to the Explosives Act, the reactive nature of directives powers under the Act is out of step with the other three Resources Safety Acts which feature a proactive component; meaning an inspector can act before a contravention occurs under those Acts. A similar proactive directive power under the Explosives Act is considered essential to ensure appropriate action can be taken by an inspector in relation to a potential contravention before it occurs. This is particularly relevant for the Explosives Act, given the substantial risks associated with the potential misuse of explosives.

*Objective of government action*

The key objective of government action is to improve, clarify, and broaden the directives frameworks under the Mining Safety Acts. Specifically, this is to be achieved through:

1. Broadening directives powers under the Mining Safety Acts relating to an engineering study to apply more generally to allow for other types of expert reports.
2. Providing greater legislative certainty around the form and operation of directives including in relation to the grounds for giving a directive, what is required of the recipient to fulfil a directive, and clarity around how long a directive stays in effect.
3. Streamlining existing directives relating to SHMS and reducing risk to provide a simpler directive framework to reduce current ambiguity around the current four directive types.

A secondary objective is broadening the directive power in relation to the contravention of the Explosives Act under section 102, so the power can also be used proactively where an inspector reasonably suspects a person is involved in an activity that is likely to result in a contravention of the Explosives Act.

*Options*

### Option 1 – Amend legislation

Amend the Mining Safety Acts and the Explosives Act in the following ways. Firstly, to amend the Mining Safety Acts to:

1. Broaden directives powers under section 172 of the CMSHA and section 169 of the MQSHA, which are currently limited to an engineering study, to instead refer to an expert report about a prescribed matter. This would still include an engineering study, but also provide for other types of reports by independent experts to be to be specified.
2. Provide more prescription concerning the minimum content and intended operation of all directives including in relation to the grounds for giving a directive (e.g. a directive to include a statement of reasons including information such as identification of the risk, basis upon which the risk is believed to be at an unacceptable level, summary of evidence upon which belief is based, etc.), what is required of the recipient to fulfil a directive (e.g. could include a requirement to produce evidence to the satisfaction of an inspector to demonstrate an acceptable level of risk has been achieved, or will be achieved, by the proposed actions) and clarity around how long a directive stays in effect or when a directive is considered to have been completed.
3. Streamline the existing four directives relating to SHMS and reducing risk under sections 166, 167, 168 and 169 of the CMSHA and sections 163, 164, 165 and 166 of the MQSHA to provide a simpler consolidated directive framework to reduce current ambiguity around the existing provisions. Note that the proactive nature of the existing directives powers is to be retained. Similarly, no changes are proposed in relation to who can give directives, who directives are to be given to and how directives are to be given.

Secondly, it is proposed to broaden the directive power under section 102 of the Explosives Act to include an additional reason at subsection (1) so the section also applies if an inspector reasonably suspects a person is involved in an activity that is likely to result in a contravention of the Explosives Act. This would involve consequential amendments to subsections (3)(a) and (3)(c) and (4) to account for the expanded application of section 102 to include a likely contravention.

### Impacts and benefits

Option 1 could potentially impact individuals and corporations in the coal mining, mining and quarrying and explosives sectors.

| Costs | Benefits |
|---|---|
| There are no direct monetary costs to business, the community or government associated with this option. However, costs associated with complying with a directive are, and would continue to be, borne by the operator or individual where a potential risk or non-compliance requiring action is identified by an inspector (this does not represent a change from the status quo). | Addresses the current ambiguity associated with directives under the Mining Safety Acts by providing a more effective and efficient directives framework under the Mining Safety Acts. The expected improvement in the quality of directives (when given) will benefit both industry and the regulator by providing greater clarity and transparency. |
| Potential increased costs associated with complying with a directive (when compared to the current arrangements) could arise from new broader directive powers - i.e., directives for expert reports (not including an engineering study) and the new proactive directive under the Explosives Act. However, the intent of these directives is aimed at fulfilling existing obligations, the costs of which already must be borne by operators. | Broadens directives powers under the Mining Safety Acts to allow for other types of expert reports. This will ensure expert reports on critical safety matters are obtained in a timely manner so potential safety concerns can be identified and addressed to minimise lost productivity. |

### Option 2 – Status quo (do nothing)

This option maintains the status quo and so will not provide a legislative solution to the three matters identified in relation to the current directives' frameworks under the Mining Safety Acts and the Explosives Act.

The identified issues relating to broadening the engineering study-related directives to apply instead to expert reports and the current reactive directives power under section 102 of the Explosives Act cannot be achieved by non-legislative means. Therefore Option 2 will not adequately address the identified objectives of government action. Note that a non-regulatory option was not included for this topic because this is not a viable option (i.e., akin to Option 2 in that it would also not adequately address the identified objectives of government action).

If the status quo was to remain there would be continued ambiguity and confusion around existing SHMS and risk reduction-related directives under Mining Safety Acts. The authority for an inspector to issue a directive for obtaining an expert report (other an engineering study) would remain constrained. There would be no authority under the Explosives Act for an inspector to issue a directive proactively to prevent a likely contravention of the Act.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 9 | 4 | 1 | 4 |

Nine (9) submissions addressed this proposal in the CRIS (which recommended option 1). Except for the MEU, the rest of the submissions came from industry stakeholders. The range of responses received for this proposal were mixed:

- Two (2) stakeholders (the MEU and the MMAA) supported this proposal
- Two (2) anonymous industry stakeholders supported this proposal in principle, or in part
- The AEISG did not support this proposal
- Four (4) stakeholders (Anglo American, Kestrel, NIOA and the QRC) provided a response that did not confirm if they support or don't support this proposal.

A common issue amongst industry stakeholders related to the proposal to enable directives to be given for obtaining independent expert reports for prescribed matters. Both Anglo American and an anonymous industry stakeholder raised concerns that directives could be used by RSHQ to require operators to obtain expert reports that could then be used against them in criminal proceedings. Kestrel submitted that this issue would give RSHQ the ability to give directives for expert reports over routine matters–for example, into each gas drainage design for every longwall panel or in relation to every principal hazard at the mine. RSHQ notes that the proposed broadening of the independent engineering study directive to include other independent expert reports would continue to be limited for use only by the chief inspector (i.e., so it will not be available to every inspector). The proposed broader power to include other independent expert reports is intended to be used in circumstances where the specialist knowledge of an independent expert is required. Similar to section 201(4) of the CMSHA (a report for an accident or incident), a report provided under section 172 of the CMSHA or section 169 of the MQSHA will not be admissible in evidence for any criminal proceeding other than proceedings about the falsity or misleading nature of the report. This will provide for protection from self-incrimination in relation to expert reports being provided. Expert reports will be used to identify casual factors in relation to a serious accident or HPI and could lead to further enforcement action being taken where appropriate with regard to the specific risk/s identified, for example, a further directive could be issued to take corrective or preventative action to prevent an identified risk. As noted in Kestrel's submission, the broader directive

power could be used to resolve conflicting views between the mine operator and the chief inspector in relation to a prescribed matter.

There was also some confusion identified in responses by stakeholders who believed the proposed expert report directive power would be available to all inspectors. This proposal is based on the existing engineering study directive under section 172 of the CMSHA and section 169 of the MQSHA, which can only be exercised by the chief inspector. RSHQ notes that this limitation is not proposed to be changed, so the proposed amended directive power to provide an independent expert report will still only be exercisable by the relevant chief inspector.

Another issue related to ambiguity with the proposal, as the CRIS did not explain or outline how relevant legislative provisions would be amended. For proposed changes to the Explosives Act (so a directive can proactively be given to address a likely contravention of the Act), AEISG were worried that any amendments may lead to inspectors issuing directives based on 'a likelihood' and they were of the view that the existing provisions allow inspectors to issue directives based on 'personal opinions.' For proposed changes that would streamline directives relating to SMHS and risk reduction, Anglo American and the QRC gave similar responses raising concerns that this risks over-regulation and regulatory uncertainty for companies. Some industry stakeholders were concerned that this could lead to arbitrary or incompetent conduct by inspectors or ISHRs, who they felt were gaining a significant expansion of power. RSHQ notes that this is not considered necessary because the competence and conduct of inspectors (including to not unnecessarily impede production) is already addressed under the Mining Safety Acts (e.g., CMSHA s.126, s.133(4), etc.). The Mining Safety Acts and Explosives Act also already include appropriate mechanisms for the review of directives. Stakeholders will have the opportunity to review the draft legislation when the consultation draft Bill is released in the second half of 2023.

In response to the above issues, some submissions included proposals such as legislated protections. Both Anglo American and an anonymous industry stakeholder proposed including legislative protections via an additional review mechanism over a decision to issue a directive and a decision that there has been non-compliance with a directive.

Feedback from other stakeholders, who also included proposals for amending relevant legislative provisions, is acknowledged. NIOA gave advice on how parts of the Resources Safety Acts should be amended for this proposal. Their submission included advice on how sections 103 to 104 of the Explosives Act should be amended. This included additional amendments to further broaden directive powers. The additional suggested amendments to further broaden directives powers under the Explosives Act are noted but are not supported. The MEU also proposed further amendments to expand ISHR powers to include the same or similar powers under sections 166, 168 and 169 of the CMHSA. Further changes to expand ISHR powers in

relation to directives are not within the scope of the proposed changes. RSHQ also notes that specific legislative amendments will be based on advice from Office of the Queensland Parliamentary Counsel.

Some submissions requested more detail and consultation. The QRC requested industry-wide consultation on the proposed nature and extent of the streamlining of directives powers. An anonymous industry stakeholder noted that further tripartite consultation is required to develop these directive tools and consider how they can be implemented. RSHQ notes that a draft Bill will be available for consultation with stakeholders.

*Final proposal*

The recommended option is Option 1, with some changes after reviewing the original proposal following the results of consultation.

The first part of Option 1 proposed to amend relevant provisions of the Mining Safety Acts to enable directives to be given for obtaining expert reports (as opposed to just engineering studies) for prescribed matters. The prescribed matters will be added to the CMSHR and MQSHR, with the draft Bill available for consultation. In response to stakeholder feedback it is now further proposed that the amendments to the Mining Safety Acts will also provide that the expert report is not admissible in evidence against the SSE, or any other mine worker mentioned in the report, in any criminal proceeding other than proceedings about the falsity or misleading nature of the report. This will align with a similar approach in section 201(4) of the CMSHA and will provide for protection from self-incrimination in relation to expert reports being provided. This remains consistent with the original intent of the provision.

The second part of Option 1 related to providing greater legislative certainty around the form and operation of directives generally, by proposing to provide more prescription in directive provisions under the Mining Safety Acts. These provisions will now also provide that where a person receives a notice of non-compliance (with a previously issued directive) from an inspector, ISHR/DWR or inspection officer, they will have a right of appeal to the chief inspector. This will ensure a consistent approach across these directive provisions.

The third part of Option 1 proposed streamlining directives under the Mining Safety Acts relating to SHMS and risk reduction, including those associated with suspending operations. This remains the same since the release of the CRIS (i.e., no further changes are proposed).

Finally, it was also proposed to amend the Explosives Act so a directive can proactively be given to address a likely contravention of the Act. This remains the same since the release of the CRIS (i.e., no further changes are proposed).

The proposed changes address the current ambiguity associated with directives under the Mining Safety Acts, will provide for a simpler SHMS and risk reduction-related directive under Mining Safety Acts, enables directives to be given about obtaining expert reports in a mining context and will permit proactive action to address a likely contravention of the Explosives Act. This will benefit both industry and the regulator and is not likely to result in significant additional costs to either.

## *Contemporary legislation*

Contemporary legislation provides the foundation for RSHQ to regulate safety and health effectively and efficiently in relation to resources industry operations. Continuous improvement and updating of legislative frameworks will help to keep this foundation relevant and effective.

### Definition of labour hire and employer

*Issue*

In keeping with modern workforce practices, the mining industry has become increasingly reliant on contractors, labour hire agencies and service providers (refer to Figure 7 - Employee versus contractor worked hours, under the 'Establish site safety and health committee' section). These agencies, as employers, have workplace safety and health obligations. The current legislative framework does not clearly provide for these more contemporary employment arrangements. This means that safety and health obligations may be misunderstood or at worst, disregarded completely.

| What is labour hire? |
| --- |
| Labour hire works in the following way – A labour hire agency supplies a worker to another organisation (host) and the labour hire agency is the worker's employer, both the labour hire agency and the host have responsibilities to the worker. Although the worker's contract is with the labour hire agency, the worker is under the control of the host while performing work at the host's workplace. |

*Rationale for government action*

Through the BoI it became apparent labour hire agencies, which supply staff for coal mining operations, do not always have a clear understanding of their workplace safety and health obligations.

This issue is further compounded by there being no obligation on either a mine operator or SSE to report the occurrence of injury, HPIs or proposed changes at the coal mine that may affect the safety and health of labour hire workers, to the agency that supplied those workers. This could result in the labour hire agency being unaware of these matters and the impacts on the safety and health of their employees.

The regulator's view is that safety and health obligations already exist in the Mining Safety Acts. However, there has been some confusion over the meaning of terms such as contractors, labour hire agencies and service providers which has served to dilute the intent of the legislation and allow alternative interpretations. This has resulted in a distancing of labour hire

agencies, for example, from the operation of the workplace where their employees (i.e., the temporary agency workers) have been placed.

To address this lack of clarity it is proposed to define a 'contractor' in the Mining Safety Acts to include all alternate methods of employment including labour hire and service providers. That will serve to limit any dispute regarding specific obligations and ensures that all workers receive the same protection irrespective of the specific arrangement. It is also proposed that a requirement be imposed on the SSE to inform the management of a contractor (e.g., labour hire agency), when there is an injury or illness to contractor's employee that causes absence from work; an HPI; or any proposed changes that may affect the safety and health of persons at the mine.

The regulator's view is that Part 3 (*Safety and health obligations*) of the CMSHA, included statutory obligations with regard to health and safety which are applicable to labour hire agencies – see in particular section 39 (*Generally application safety and health obligations*), section 43 (*Obligations of contractors*) and section 47 (*Obligations of service providers*). These provisions are replicated in Part 3 (*Safety and health obligations*) of the MQSHA, see in particular sections 36, 40 and 44.

However, the labour hire agencies themselves do not agree. This was evidenced in the recent BoI where it was found that the labour hire agency which supplied staff for a coal mine did not consider that it has any statutory obligations at the mine pursuant to either section 43 or 47 of the CMSHA. It was of the view that the labour hire agency provided labour only, and the workers worked under the exclusive control of the mining company to whom they supplied the labour. The labour hire agency felt they had no control over the workers on site. As such, all the operational risks, were considered the relevant mining company's responsibility.

It is important to note that neither the term 'labour hire worker' nor the term 'contractor' is defined in either of the Mining Safety Acts. Contractors typically perform short-term specialised tasks such as discrete repair or construction tasks as well as ongoing specialised tasks. Contractors often supply their own plant and equipment. Contractors may be substantial organisations, smaller businesses, or self-employed individuals. Contractors' workers are also referred to as contractors. Furthermore, labour hire workers and contractors are often referred to collectively as 'contractors', thereby distinguishing them from workers employed directly and permanently by a mine operator.

It is essential that all those involved in the employment of a worker and who have a level of control over the work environment are held responsible for the health and safety of the worker. This is reflected in both the Queensland and the NSW WHS legislation which are

identical with regard to the primary duty of care provisions (see section 19 of the WHSA). However, unlike the NSW version of the WHSA, the Queensland WHSA does not apply to a mine to which either the CMSMA or the MQSHA applies (Schedule 1, Part 2, Division 1, section 2 of the WHSA).

Whilst Part 3 of both the CMSHA and the MQSHA provides for safety and health obligations, the confusion seems to lie in the interpretation of certain terms that are not defined in the legislation and are therefore open to interpretation, that is, a contractor, and a labour hire agency. A definition of service provider is stated as simply 'A person who provides a service at a mine'. If clear definitions of these terms are provided the safety and health obligations would become explicit and would potentially function in the intended manner.

It would also assist the labour hire agencies to meet their safety and health obligations if there was an obligation on the host (in this case the mine operator or SSE) to inform the agency when there was an injury or illness to a contractor employee (e.g., labour hire agency employee) that causes an absence from work; a HPI; or any proposed changes that may affect the safety and health of persons at the mine.

| Source | Evidence |
|---|---|
| BoI Report, Part II | *Finding 92* - Neither coal mine operators nor Site Senior Executives (SSEs) presently have an obligation to report the occurrence of high potential incidents (HPIs) involving labour hire workers to the labour hire agency that supplied those workers.<br><br>*Finding 93* - In Queensland, labour hire agencies providing workers to the coal mining industry have no clear and express obligation to ensure that the workplaces into which they send their employees are as safe as reasonably practicable (such as that contained in section 19 of the *Work Health and Safety Act 2011* (NSW) (the NSW Act)), and may be entirely unaware of the occurrence of incidents that pose a risk of significant adverse effects to the safety and health of those employees. Even if a labour hire agency becomes aware of the occurrence of a reportable HPI, it has no obligation to report it to the regulator.<br><br>*Finding 94* - The imposition of a safety and health obligation on labour hire agencies which employ coalmine workers, such as that set out in section 19 of the *Work Health and Safety Act 2011* (Qld) (the WHSA), would make coal mine operators and labour hire agencies mutually responsible for the safety and health of labour hire workers and add a layer of oversight of safe practices. |

*Objective of government action*

Government action is needed to ensure that safety and health obligations that cover all types of employment arrangement are clearly expressed in legislation.

*Options*

### Option 1 – Amend legislation

The following amendments are proposed for both the Mining Safety Acts.

It is proposed that the definition of 'contractor' be amended to be non-exhaustive and include an entity that provides a service, performs work or provides labour to a coal mine. A note could also be inserted which provides an example of a contractor as a labour hire agency. The service provider provisions could then be removed.

The definition of a mine worker could then be amended to remove reference to a service provider or employee of a service provider and to refer to a contractor or employee of a contractor or a person otherwise engaged by a contractor. The advantage of this approach is that it eliminates the distinction between contractor, service provider and labour hire companies and the resulting confusion about which category a company falls into where there is no apparent need to provide differing obligations. Minor supporting consequential amendments would also be made.t is also proposed that amendments will be made, similar to those outlined in section 106 of the CMSHA and section 105 of the MQSHA, requiring the SSE to notify a contractor (e.g. labour hire agency) who employs or otherwise engages a coal mine worker when there is an injury or illness to a worker that causes absence from work; a HPI; or any proposed changes that may affect the safety and health of persons at the mine.

### Impacts and benefits

| Costs | Benefits |
|---|---|
| Compels the SSE to advise specific safety issues to labour hire/contractor agencies and for these agencies to notify the regulator of certain incidents. | Ensures the definition of contractor covers all types of employment arrangement which has a positive social impact for workers who are employed on a contractual basis, including those recruited through labour hire agencies, and their families in that they can be assured that, whatever their employment status, their safety and health will receive appropriate care and attention. |

| | |
|---|---|
| | Reporting safety issues to the regulator will assist the contractor agencies to fulfil their safety and health obligations to their employees by ensuring that they are fully informed regarding the ongoing safety of the workplaces which they send their employees into. |
| | Labour hire agencies may develop a culture that encourages its workers to report—to its own management—safety and health incidents and concerns. |

### Option 2 – Status quo (do nothing)

This option would maintain the status quo and would not meet the objectives of government action. As is evidenced by the recent BoI findings there continues to be misunderstandings regarding the intent of the legislation which has led to the avoidance of important safety and health obligations. Other than legislative amendment there are no other ways to provide a clear imperative for relevant entities to meet these obligations.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 7 | 2 | 3 | 2 |

Seven stakeholders responded to this proposal, with the majority (four) from industry, two industry associations and the MEU. All four industry respondents as well as MMAA felt that regardless of the form of engagement of the mine worker, all workers are answerable to the SSE and should be compliant with the SHMS. Glencore stated that "irrespective of whether they are a labour hire organisation, a traditional contractor or a coal mine operator, all employers have existing legal obligations and duties owed to their employees when it comes to health and safety matters. Having the term 'contractor' encompass labour hire and service providers will not alter the obligations of the respective organisations". It is agreed that safety and health obligations already exist in the Mining Safety Acts. However, through the Coal Mining BoI it became apparent labour hire agencies, which supply staff for coal mining operations, do not always have a clear understanding of their workplace safety and health obligations.

Two of the respondents, Kestrel and the MEU were supportive of the general principle of the proposal, with Kestrel stating that it will provide industry wide alignment on the definition of a contractor. Kestrel felt however that extending the reach of liability will not necessarily result in better safety outcomes and asked that RSHQ consider how labour hire companies and other types of service providers (who are detached from the day to day running of the mine) can discharge their safety obligations in an effective and practicable way. RSHQ will consider the practical application of the proposed amendments during the drafting of the legislation.

Concerns were expressed by the QRC and an anonymous industry stakeholder that the distinction between the different types of work arrangements would be lost with this option, and safety outcomes could be compromised. The distinctions between different types of work arrangements are understood and outlined in the above rationale for government action. Care will be taken during drafting the new non-exhaustive definition for contractors to ensure that safety outcomes remain uncompromised. Stakeholders will have the opportunity to review the draft legislation when the consultation draft Bill is released in the second half of 2023.

An anonymous industry stakeholder suggested that reference to the *Labour Hire Licensing Act 2017* could be used to define labour hire. However, the main purpose of the *Labour Hire Licensing Act 2017* is to protect labour hire workers from exploitation and to regulate providers of labour hire services in Queensland through a licensing scheme. The definition provided for labour hire services in this legislation includes a contractor as an example. It is noted that the WHSA which covers as a worker; an employee of a labour hire company – does not include the definition of labour hire services from the *Labour Hire Licensing Act 2017*. Therefore, it is not intended that this particular definition will be used.

The industry stakeholders were divided on an SSE having to inform the management of a labour hire/contractor agency of particular safety matters. Both Kestrel and Glencore felt it unnecessarily burdensome while an anonymous industry stakeholder expressed support for this part of the proposal. It is appreciated that this proposal includes an additional reporting requirement. However, it is considered necessary to assist labour hire agencies to meet their safety and health obligations. This will be clarified in the draft legislation and any practical implementation matters concerning reporting by the SSE and a labour hire organisation will be resolved then.

### *Final proposal*

As there was support for the **intent** of the proposal outlined in Option 1 – any entity who supplies workers to mines has safety and health obligations and these obligations to need to be clear in the legislation as demonstrated in the BoI, the final proposal is as follows:

The definition of 'contractor' will be amended to be non-exhaustive and include any entity that provides a service, performs work or provides labour to a coal mine. An obligation for both the SSE and the contractor to ensure that all appropriate entities are fully informed of safety issues will also be introduced.

These amendments will serve to clarify terms and remove any misconception that a safety and health obligation may not apply to certain entities. This will also ensure that all employers who are responsible for the safety and health of their employees are fully informed of any existing and emerging safety issues that may affect the workplace.

This legislative amendment will benefit the mining industry by providing clarity for all. Any costs will only be borne by organisations who are not already fulfilling their safety and health obligations for their workers, whatever their manner of employment.

The WHS legislation in both NSW and Queensland include primary duty of care provisions that cover these types of employment arrangements. In Queensland, the mining safety legislation was established specifically to cover safety and health in the resources sector, and it is necessary to ensure that the same protection for employees, whatever their employment status, is provided within this legislation. The proposed amendments work within the current legislative framework for mine safety without replicating the WHSA provisions, preserving the necessary distinctions between the two frameworks that ensure the Mining Safety Acts' appropriateness to the high hazard industries to which they apply. This avoids a major redraft of the safety and health obligations established in Part 3 of the Mining Safety Acts and enhances clarity with a broadened definition of contractor that covers all employment arrangements including service providers and labour hire agencies. The Queensland Office of Parliamentary Counsel will finalise the wording for the proposal and a draft Bill will be consulted on with stakeholders.

## Industrial manslaughter

*Issue*

The offence of industrial manslaughter was introduced in the Resources Safety Acts by the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*. The offence provisions, which are currently in operation, are found in the CMSHA (Part 3A), the MQSHA (Part 3A), the PG Act (Chapter 11, Part 1AA), and the Explosives Act (Part 4A). It is not intended to discuss the issues raised in the development of the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*, which has been passed by Parliament. The industrial manslaughter offences are now in operation.

The issue identified in this current process is that the definition of 'employer' has potential ambiguity in the extent of coverage of the industrial manslaughter offence. Consequently, the industrial manslaughter offence provisions as drafted may include some gaps in meeting objective of the original amendment in the *Mineral and Energy Resources and Other Legislation Amendment Act* 2020[40]— insofar as it is concerned with ensuring consistency in how deaths of workers on work sites are treated across all industries.

There is some doubt that the current industrial manslaughter offence provisions would cover a coal mine operator when they cause, by criminal negligence, the death of a worker – if there is a labour-hire agency or independent contractor who employs the worker. The industrial manslaughter offence provisions make an 'employer' liable for the negligent death. The definition of employer in the CMSHA is not sufficiently clear and needs to be clarified so that it covers all entities - including the holder, a coal mine operator, a labour hire agency, a contractor or any other person who employs/engages or arranges for a worker to perform work (and a senior person of such an entity). The issue extends to the other Resources Safety Acts as these industrial manslaughter provisions are similar. The need to clarify the issue is reflected in the increasing trend of employing workers through a non-permanent basis, such as contractors from labour hire agencies (refer to Figure 7 - Employee versus contractor worked hours, under the 'Establish site safety and health committee' section).

The BoI made findings and recommendations in relation to the industrial manslaughter offence provisions in the CMSHA. The BoI was concerned that the amendments may not reflect Parliament's intention to extend industrial manslaughter provisions to the CMSHA to ensure consistency in how deaths of workers on work sites are treated (as they are in the WHSA). The intent of the amendments introduced into the Resources Safety Acts by the *Mineral and Energy Resources and Other Legislation Amendment Act 2020* was to address criminal responsibility where a resource sector worker's death was caused by the criminal negligence of an employer or senior officer of an employer and that maximum penalties were an appropriate deterrent and sanction.

### *Rationale for government action*

Government action is required to ensure the industrial manslaughter offence provisions work as they were intended when industrial manslaughter was introduced by Parliament in the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*.

[40] Explanatory notes to the *Mineral and Energy Resources and Other Legislation Amendment Act* 2020.

| Source | Evidence |
|---|---|
| BoI Report, Part I | *Finding 81* - As the explanatory notes to the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (Qld) suggest, the intention of Parliament in extending industrial manslaughter provisions to the Act was to strengthen the safety outcomes in coal mining and to ensure consistency in how deaths of workers on work sites are treated.<br><br>*Finding 82* - If the Board's interpretation of the definition of employer is correct, the amendments to the Act may not reflect Parliament's intention as to who should be liable to prosecution under Part 3A of the CMSHA. |

### *Objective of government action*

The objective of government action is to remove any ambiguity concerning the operation of the industrial manslaughter offences in the Resources Safety Acts and to ensure that the original Parliament intention that there be consistency of how deaths of workers are treated is implemented.

### *Options*

#### Option 1 – Amend legislation

Legislative amendments to the Resources Acts are proposed to ensure that any entity who may be liable for causing, through criminal negligence, the death of a worker on-site is able to be prosecuted including a coal mine operator, holder, labour hire companies, contractors or any other person who employs/engages or arranges for a worker to perform work (and a senior person of such an entity). The intention is to ensure that each of these entities have been clearly identified in the legislation as possible employers with regard to the industrial manslaughter provisions as this will remove the current ambiguity and achieve Parliament's original intention of improving safety and treating the death of workers on sites consistently across all industries.

The intention of Parliament was to ensure that the employer and a senior officer which cause the death of a resources sector worker through criminal negligence would be subject to the industrial manslaughter offence provisions and prosecution, regardless of their basis of employment as permanent or contractor. This is further supported in the Explanatory Notes for the industrial manslaughter offence provisions which calls for consistency with the WHSA. Under the WHSA, the offence applies to a person conducting a business or an undertaking, or their senior officer without consideration of the employment basis of that person. The employer and senior officer are subject to the offence because of their role in the business or undertaking. It would be a perverse outcome if industry was to avoid any potential responsibility on the basis of the employment relationship as a contractor. It would also not deliver on the safety outcomes intended by Parliament for the industrial manslaughter offences.

Impacts and benefits

| Costs | Benefits |
|---|---|
| Industry stakeholders are only affected if they have breached the legislation leading to a prosecution and amendments will ensure that prosecution action can be taken where appropriate. Note: it is not anticipated that there will be a significant change in the number of industrial manslaughter proceedings brought before the courts. | Removal of any potential ambiguity will ensure the objectives of the original amendment are achieved, that is to strengthen the safety culture in the resources sector through the introduction of industrial manslaughter offence provisions. The original amendments intended to ensure that there are sufficient penalties where there is criminal negligence by an employer or senior officer and it has caused a workplace fatality. |
| | Clear legislation will serve as a deterrent for offences that might otherwise avoid prosecution due to employment arrangements. |
| | Clear legislation will ensure that court's time is not wasted interpreting ambiguous provisions in the course of prosecutions. |

Option 2 – Status quo (do nothing)

As the issue concerns the clarity and sufficiency of the existing legislative provisions for industrial manslaughter offences, retaining the status quo will mean that the problem is not addressed, and the ambiguity will continue. It was the intention of Parliament to ensure that an employer and a senior officer of an employer which negligently cause the death of a resources sector worker would be subject to the industrial manslaughter offence provisions and prosecution. Leaving the legislative provisions as they currently are would not meet this intention nor that of the BoI recommendations.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 20 | 8 | 7 | 5 |

There were 20 submissions from stakeholders regarding this proposal however seven submissions discussed the introduction of industrial manslaughter as an offence. The industrial manslaughter offences are now in operation and there is no government imperative to remove these provisions. These submissions have been listed as 'does not support' in the above table.

Industrial manslaughter was introduced into the Resources Safety Acts by the *Mineral and Energy Resources and Other Legislation Amendment Act 2020* (MEROLA Act 2020). The current legislation brings Resources Safety legislation into line with the existing industrial manslaughter offences under Queensland's WHSA, providing consistent treatment of criminal negligence across all industries. The policy objective of introducing manslaughter under the MEROLA Act in 2020 remains unchanged. The industrial manslaughter offence provision already in the legislation aims to ensure that there are sufficient penalties where there is criminal negligence by an employer or senior officer, and it has caused a workplace fatality. The legislation provides consistency in how deaths of workers on Queensland worksites are treated and aligns with the Queensland Government's commitment to ensuring the safety and health of all workers across all industries.

The proposal is about making a minor adjustment to ensure there is sufficient clarity in the existing legislation. The issue identified is that the definition of 'employer' has potential ambiguity in the extent of coverage of the industrial manslaughter offence. Consequently, the industrial manslaughter offence provisions as drafted may include some gaps in meeting the objective of the original amendment in the MEROLA Act— insofar as it is concerned with ensuring consistency in how deaths of workers on work sites are treated across all industries. The QRC was concerned that the proposed changes would not provide greater clarity concerning who is liable for industrial manslaughter and would apply to statutory office holders. Whether a person in a statutory position is a senior officer and therefore liable to industrial manslaughter offence is a question of fact. An SSE may not be a senior officer if they play a small part in decision making. However if they are the director of a company, they would be a senior officer and therefore liable for an industrial manslaughter offence if their criminal negligence caused the death of a worker. APPEA was also concerned about the proposed approach and whether it would apply to workers below the executive level. Stakeholders will have a further opportunity to comment on a draft Bill and the wording drafted by the Office of Queensland Parliamentary Counsel for this proposal.

Apart from these submissions, eight stakeholders supported the proposal outlined in Option 1, for example, an anonymous submitter believed that the proposal would remove any ambiguity that the liability in industrial manslaughter can attach to a coal mine operator, holder, labour hire company or contractor. Two stakeholders supported the proposals with specific qualifications, for example, Kestrel felt that extending the reach of liability will not necessarily result in better safety outcomes. MEU pointed out that it was difficult to comment on the effectiveness of the legislation without any attempted prosecution for industrial manslaughter.

Five stakeholders were not definitive regarding their support of the proposals with the majority seeking clarification on the specifics of the legislative amendments which will be available as part of the consultation process on the draft Bill. One anonymous industry stakeholder didn't believe that there was an evident problem.

MMAA also held concerns regarding the lack of statute of limitations of the industrial manslaughter provisions. Industrial manslaughter is an indictable offence and as with other indictable offences, there are no time limitations for commencement of proceedings.

*Final proposal*

It is proposed to amend the Resources Safety Acts to ensure that industrial manslaughter offences apply to whomever employs/engages or arranges for a worker to perform work and whose criminally negligent conduct caused the death of the worker (and a senior officer of such an entity). This may include a mine operator (this would be excluded for the PG Act and the Explosives Act), a holder, a labour hire agency or a contractor (and a senior person of such an entity). The intention is to ensure that each of these entities have been clearly identified in the legislation as possible employers with regard to the industrial manslaughter provisions. This change will ensure that the appropriate person/entity in cases where criminally negligent conduct causes the death of a worker is able to be prosecuted (either jointly or severally).

It is noted that all Resources Safety Acts include the term 'holder' and the definition of holder under each Act covers the entities that hold the licence, permit or other authority that allows activities to be undertaken in the relevant resources industry.

The amendment will create certainty and remove any potential ambiguity. It will not alter any other components of the industrial manslaughter provisions. It will only impact industry if they cause the death of a worker by criminal negligence. The legislative intent underpinning the offence of industrial manslaughter is to adequately address the degree of criminal responsibility evident in the worst category of cases and this proposal will only serve to strengthen that.

## Remote operating centres

*Issue*

Operators of coal mines in Queensland are increasingly utilising remote operating centres (ROCs) as part of their mining operations, and this is becoming more prevalent. ROCs are an emerging approach to managing operations in the resources sector whereby ROC workers, who are not located at the mine site but can be interstate or even overseas, provide instructions and issue directions to coal mine workers at Queensland coal mines in relation to coal mining operations. This can include directions to mine site workers regarding the movement of machinery at the mine and remote operation of equipment and plant, and directions which relate to where and when people will work, for example what haul trucks will go to which excavator to be loaded and where they will tip.

The CMSHA creates obligations for a person who may affect safety and health at coal mines or as a result of coal mining operations and this would apply to off-site supervisors giving instructions to coal mine workers on site. A person on whom a safety and health obligation is imposed must discharge the obligation and penalties are provided for failing to do so. However, workers at ROCs are not appointed as supervisors or hold a designated statutory role under the mines SHMS. Workers at ROCs are not on site and are unlikely to have been inducted at the mine site. Moreover, they may not be familiar with the mine site environment, including the site's particular hazards, yet they can carry out a wide variety of functions in relation to operations at coal mines which effectively make them off-site supervisors. This could include giving directions to mine site workers regarding the movement of machinery at the mine.

These operating arrangements have the potential for instructions being given to on site coal mine workers, in the absence of a sufficient understanding of the particular hazards at the relevant mine, or a sufficient understanding about the particular requirements of the relevant mine's SHMS. Recommendation 4 of the Brady Review observed that absent or inadequate supervision has the potential for tasks to be approached in an unsafe manner. Accordingly, where persons at ROCs are issuing directions to persons at site, or performing functions of a supervisory nature remotely, in particularly where they do not have knowledge of the hazards at site, this has the potential for tasks to be approached in an unsafe way. This proposal proactively addresses that risk.

### *Rationale for government action*

The rationale for government action is to bolster safety in these sorts of operations. How ROCs operate currently poses a potential increased risk to the safety and health of workers. This is because ROC off-site supervisors may not be inducted into the mine site, not covered in the SHMS, may not report to the SSE and are not specifically recognised in the legislation.

### *Objective of government action*

The objectives of government action are to facilitate industry's use of modernised operational practices via ROCs whilst ensuring that the safety and health of workers is protected under these types of operations.

### *Options*

#### Option 1 – Amend legislation

It is proposed to amend the Mining Safety Acts to clarify the obligations for off-site supervisors, that is ROC workers who give instructions to mine workers at the mine. The type of instructions given include where and when workers are to work as well as, for example, directing excavation

activities. It is proposed that appropriate examples will be provided in the legislation for clarity. Obligations for off-site supervisors would include clarifying safety and health obligations, the role of off-site supervisors in SHMS, requirements for training, induction and competency requirements. Consequential amendments would be considered for the MQSHR and the CMSHR as a result of these proposals.

The following areas have been identified for amendment.

### Safety and health obligations

Section 39(1) of the CMSHA and section 36(1) of the MQSHA provides for the safety and health obligations of persons generally and applies to a mine worker or other person at a mine ***or a person who may affect the safety and health of others at a mine as a result of mining operations***. Consequently, the Mining Safety Acts creates obligations for a person who may affect safety and health at mines or as a result of mining operations. So, if a person at a ROC was issuing instructions to a mine worker and that was affecting safety and health at mines, a safety and health obligation under the Mining Safety Acts exists. A person on whom a safety and health obligation is imposed must discharge the obligation and penalties are provided for failing to do so.

It is proposed to clarify that the requirements in section 39(2) of the CMSHA and section 36(2) of the MQSHA, which apply to a person at a mine, would also apply to a person located off-site who may affect the safety and health of others at a mine by giving directions to a mine worker (i.e., an off-site supervisor). This would include requirements for:

- Work and activities under their control, supervision or leadership to be conducted in a way not to expose a worker or others to an unacceptable level of risk;
- Participate in and conform to the risk management practices of the mine;
- Complying with instructions for safety and health by a mine operator, SSE or a supervisor;
- To not do anything wilfully or recklessly that might adversely affect safety and health of someone at a mine.

### SHMS

It is proposed to clarify SHMS provisions (e.g., section 62 of the CMSHA and section 55 of the MSQHA) so that it is clear that a mine's SHMS needs to also address directions given to a mine worker by a person not located at the mine site (i.e., an off-site supervisor).

### Training, induction and competency

It is proposed to clarify that off-site supervisors giving a direction to a mine worker must have already received on-site induction and training before they give such directions. They also need to be competent and have relevant competencies in the areas on which they are to give instructions.

### Consequential amendments

In addition, consequential amendments are proposed to be progressed to the CMSHA and the CMSHR as a result of the above proposals.

### Impacts and benefits

| Costs | Benefits |
|---|---|
| Industry will need to ensure ROC workers (off-site supervisors) understand their safety and health obligations. Anecdotal evidence shows that the average number of ROC workers per site is currently around six. It should be noted that not every mine site manages their operations using ROCs. | Clarifying the safety and health obligations of ROC workers (off-site supervisors) will add certainty to the industry |
| On-site training and induction will be required for off-site supervisors. These costs arguably should already exist as off-site supervisors already have safety and health obligations under the CMSHA (including to take reasonable action to ensure anyone is not exposed to an unacceptable level of risk) and should be undertaking this training now. | ROC workers will understand their safety and health obligations. |
| SHMS will need to provide for off-site supervisors. This should not be a significant change for industry. | It will provide improved protection for the safety and health of workers and facilitate enforcement activities. |
| Costs on industry are unlikely to be significant. | |

## Option 2 – Status quo (do nothing)

Under this option, no legislative changes would be made, and industry will continue to operate as it currently does. There will still be a potential increased risk to the safety and health of workers as the use of ROC grows. Taking no action poses a reputational risk for industry and the regulator given that the potential for safety risks has been identified.

*Results of consultation*

Proposal to clarify safety and health obligations for ROCs

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 16 | 6 | 2 | 8 |

While some stakeholders supported this proposal for ROCs, there were a number of unclear submissions. One submission was opposed to having anyone give directions off-site. Predominantly the responses to this proposal related to a lack of clarity as to how the proposal fits with the ROC operations. Those who supported the proposal, such as AFPA, AWU and a number of anonymous submissions, indicated the need to regulate ROCs as an emerging trend. The MEU provided in principle support. A large number of submissions, including the submissions by QRC, Kestrel and some anonymous submitters indicated that the current legislation already provides health and safety obligations that could apply generally, and that those general obligations would apply to ROC workers giving directions. Others expressed the belief that the SSE already have obligations to ensure those giving directions understand the hazards and the relevant SHMS. A minority of the responses indicated a need to further analyse the issue prior to any changes. For example, Glencore indicated that there were a range of important considerations to be taken into account and scrutinised carefully before any legislative amendments are considered. Anglo American provided that there needs to be more discussion regarding the proposal. However, none of these submissions explained how the current legislation would incorporate ROC workers giving directions off-site. The submissions indicated that the existing general requirements sufficiently address the issue. However, on closer analysis, the legislation does not delineate the safety obligations that apply generally to those that would apply to a ROC worker giving instructions to on-site workers.

While there was some support for extending the ROC proposal to the MQSHA – most stakeholders did not address the specific question asked about whether the ROC proposal should apply to the MQSHA.

A small number of submissions were about the proposal applying to petroleum and gas related activities, however the proposal does not extend to these areas at this stage.

The proposal seeks to provide clarity in the legislation as to how the role of a ROC worker giving direction to workers onsite, fits into the health and safety requirements. Unlike on-site supervisors, ROC workers who are giving directions to onsite workers, are not specifically

recognised in the legislation nor is their role given specific health and safety obligations. This leaves the legislation open to potential ambiguity which may defeat the intent of the health and safety obligations, particularly as the onus on those in supervisory roles is greater. In effect, the ROC worker giving directions remotely to a worker on-site, is carrying out supervisory activities similar to the activities carried out by a supervisor.

Supervisors have specific requirements due to the nature of their role, for example, a supervisor is part of the SHMS, reports to the SSE, needs to satisfy training and competency requirements and is inducted at the mine. The reason for these requirements is to reduce potential risk and bolster health and safety at the mine. It would be an anomaly in the legislation to leave out ROC workers doing similar activities to supervisors from safety and health requirements that should be specifically relevant to them. The fact the ROC worker is in a remote location, and in some instances may never have been to the mine, is not part of the SHMS or the reporting structure at the mine, increases the potential for risks. The intention of the proposal is to reduce the risks that may exist in these situations. It is intended to apply the ROC proposal to the CMSHA as well as the MQSHA.

### Proposal to provide for safety critical roles to be located at mine site

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 17 | 10 | 4 | 3 |

Stakeholders were also asked if there should be a requirement in the CMSHA that persons in safety critical roles must be located at a mine site e.g., an SSE, UMM and ventilation officer. The vast majority of respondents supported the assertion that persons in safety critical roles should be located at the mine site, for example, the MEU and the AWU. This was on the basis that it is appropriate and reasonable for the safety critical roles to be located at the mine site for which they are responsible for safety matters.

Kestrel and Glencore indicated they needed further information regarding what is proposed in order to provide feedback. Anglo American did not directly support the proposal; however, it indicated that any requirement to have persons in safety critical roles “located at the mine site” needs to be carefully defined to avoid a situation where an SSE or UMM is prohibited from giving directions while they are absent for a limited, scheduled/rostered period.

The safety critical roles are essential for both coal mining and mineral mines and quarries. Amendments are proposed to the Mining Safety Acts to provide that persons in safety critical

roles must be located at a mine. There have been situations where some safety critical roles are being undertaken on a mine site for less than 50 percent of the time. Noting these safety critical positions (e.g., an SSE or an UMM) are essential for the safe operation of a mine and supervision of workers, it is important that these roles are located on a mine site.

The Brady Review found that a large number of the 47 individual fatalities during the review period involved inadequate training of workers; controls meant to prevent harm were ineffective, unenforced or absent with no, or inadequate, supervision. The review also found almost all of the fatalities were the result of systemic, organisation and supervision of training failures. Human error alone would not have caused these fatalities. Recommendation 2 of the Brady Review recommended that industry should recognise that the causes of fatalities are typically a combination of banal, everyday, straightforward factors, such as a failure of controls, a lack of training, and/or absent or inadequate supervision.

*Final proposal*

### Proposal to clarify safety and health obligations for ROCs

After consideration of stakeholder feedback Option 1 to clarify the safety and health obligations of ROC workers is the final proposal.

While the legislation contains existing safety and health obligations which would apply to off-site supervisors who give instructions to mine workers on site, ROCs introduce further operational complexity. In order to ensure that the safety and health of workers are sufficiently protected, it is necessary to clarify the safety and health obligations for ROC off-site supervisors. This promotes HRO principles of sensitivity to operations and deference to expertise, by ensuring that ROC workers have a realistic appreciation of conditions at the site with which they are interacting and are appropriately involving statutory position-holders in decision-making.

Modernised operational practices such as ROCs allow operations to be more efficient, however, that efficiency should not come at a cost of safety in the industry and this proposal will ensure that safety remains paramount.

### Proposal to provide for safety critical roles to be located at mine site

In addition to clarifying the safety and health obligations for ROCs, amendments are proposed to the Mining Safety Acts to provide an obligation on the operator (in relation to an SSE as a safety critical role) and on the SSE (in relation to other safety critical roles) to ensure persons in safety critical roles are located at the mine. The safety critical roles for the CMSHA and the

MQSHA will be the SSE and UMM. For the CMSHA, the VO, surface mine manager, MEM and EEM are also considered to be safety critical roles.

There may be situations where other roles are critical for the safe operation of a mine site. There will be an obligation included under the CMSHA and the MQSHA for the SSE, through the SHMS, to identify, designate and nominate other roles which may be safety critical roles which need to be located at a mine site – for example geotechnical positions or an ERZ controller. The requirement to be located at a mine site will also extend to persons acting in safety critical roles. Noting the nature of the industry (i.e., fly-in fly-out (FIFO) and rostered work arrangements) and that safety critical roles are often senior positions where a person may be required offsite to attend meetings such as at a head office, there will be situations where exceptions to the requirement to be located on a mine site will apply. For example: -

- The person in the safety critical role or the person acting in the safety critical role, is undertaking their duties offsite temporarily (i.e., attending offsite meetings), but for not more than seven days for safety critical roles under the CMSHA and 14 days for safety critical roles under the MQSHA; or
- The person in the safety critical role or the person acting in the safety critical role is absent from duty for not more than seven days for safety critical roles under the CMSHA and 14 days for safety critical roles under the MQSHA.

| Costs | Benefits |
|---|---|
| It is unlikely that this proposal would attract significant costs as mines generally employ adequate staff to cover absences. As absences for those working in safety critical roles in coal mines will decrease from 14 days to seven days (compared to existing requirements of 14 days for some of the positions) there is a possibility that some additional staff may be required. | It will provide constant protection for the safety and health of workers. |

Similar provisions currently operate in NSW, whereby statutory functions are identified and the person nominated to that function must be readily available to exercise that function at the mine. Mining activities must not take place by an operator where an individual has not been nominated to exercise the statutory function at the mine for more than seven days (see Part 9, Division 2 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 (NSW)).

Schedule 10 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 details the statutory functions at a mine. Depending on the type of mine, these functions may include

the MEM, EEM, VO, undermanager, underground mine supervisor, deputy or a quarry manager. Section 133(2) of the Regulation provides that the mine operator must ensure an individual nominated to exercise a statutory function at the mine is readily available to exercise, and is capable of exercising, the statutory function. Section 133(4) of the Regulation states that the mine operator must ensure mining activities, except exploring for minerals by means other than mechanical means that disturb the ground, do not take place at the mine if a key statutory function is set out in Schedule 10 for the mine, and an individual has not been nominated to exercise the key statutory function at the mine for more than 7 days.

It is proposed that the exceptions that operate under sections 25(2) and (3) of the CMSHA and sections 22(2) and (3) of the MQSHA will continue to apply, unaffected by this proposal (i.e. that an officer with responsibility for exploration activities under a prospective permit, an exploration permit or a mineral development licence is not required to be located at or near the mine; and that if the officer only has responsibility for a separate part of a mine, the officer's responsibilities and safety and health obligations as a site senior executive for a mine are limited to the separate part of the mine for which the officer has responsibility).

## A contemporary board of examiners

*Issue*

The BoE is a Government Board established under a Queensland Act of Parliament. As such the board should be conducted in accordance with Queensland government's good governance standards as outlined in the document: **Welcome Aboard: A guide for members of Queensland Government Boards, committees and statutory authorities** developed by the Department of Premier and Cabinet (DPC). Page five of this guide states the following:

> *"Ministers are responsible to Parliament for the operation of all Government Boards and agencies within their portfolios. The authority of a Minister to give directions to a board is sometimes specified in the enabling legislation, or in the absence of enabling legislation, the terms of reference or constitution."*[41]

Neither the CMSHA nor the MQSHA specifies that the Minister can give directions to the board.

This handbook also provides guidance in relation to government board composition, including members skills, attributes and expertise. In particular, it highlights the need to have people

[41] Department of the Premier and Cabinet, *Welcome Aboard: A guide for members of Queensland Government Boards, committees and statutory authorities*, page 5.

with appropriate skills and experience and that ideally, a board should have a diverse set of members with a blend of expertise, experience and range of perspectives.

According to the Mining Safety Acts all board members must have a minimum of 10 years practical experience in the mining industry and holding certificates of competency. However, despite the board being responsible for developing and overseeing the assessment of competencies, there is currently no requirement for someone with expertise in the assessment of competencies to be appointed to the board.

Over time and given the structure of the current board, some questions have arisen regarding the capacity of the board to work independently of both the regulatory body (i.e., RSHQ) and the Queensland mining industry. Currently the board does not have an independent chairperson and, according to legislative requirements, an inspector (appointed under either of the Mining Safety Acts) must be chairperson.

### *Rationale for government action*

The Mining Safety Acts tasks the BoE with the duties of determining and assessing the competencies required to fulfil statutory functions within the mining industry and ensuring consistency in approach with other jurisdictions. The BoE has a history of working towards providing a safe working environment in both surface and underground mines by ensuring that key mining personnel are not only qualified but are competent in dealing with the potential hazards associated with mining.

#### Governance

Neither the CMSHA nor the MQSHA specifies that the Minister can give directions to the BoE. Being a long-standing board, it is timely for its functionality and effectiveness to be examined and any efficiencies and operational improvements identified and implemented. One of the identified issues is the lack of executive control despite the Minister being responsible for the operation of government boards within the Ministerial portfolio.

It would be appropriate for the BoE to maintain its independence regarding issuing or granting of notices, certificates and registrations. Constraining this independence would likely undermine the Board's confidence in making critical decisions and discourage participation on the Board.

#### Structure

The size, composition, and skill set of a public sector board must be appropriate to effectively fulfil its statutory obligations. In accordance with the Mining Safety Acts all board members to

have a minimum of 10 years' practical experience in the mining industry and hold a certificate of competency under one of the Mining Safety Acts, as well as the need for certain members to hold a first class certificate of competency for each of the two underground mine types (i.e., coal and metalliferous).

In order for the BoE to work independently of both the regulator and the Queensland mining industry it would be preferable for an independent chairperson to be appointed. An independent chairperson would be better positioned to ensure interaction between members remains relevant, productive and focussed towards achieving the BoE's objectives. A neutral chairperson would also help to minimise or diffuse potential tension where there are disparate views and ideas.

There is also need for at least one board member to have expertise in determining and assessing competencies, the board's primary role. Despite the BoE being responsible for developing and overseeing the assessment of competencies, there is currently no requirement for someone with this expertise to be appointed to the board. The BoE's role is to decide competencies necessary for holders of certificates of competency, set exams and issue certificates of competency and SSE notices to people who want to work in statutory positions in the metalliferous and coal mining industries in Queensland. The BoE also has an important role in ensuring that Queensland competencies are consistent with other jurisdictions.

Contemporary trends in learning and assessment of competence are constantly evolving. In the current environment, where mining safety is a concern, it would be prudent that decisions concerning the assessment of competence are well-informed.

### *Objective of government action*

The objective of this proposal is to ensure that the BoE framework follows 'best practice' and aligns with the handbook for Queensland Government Boards developed by the DPC as well as following good governance principles such as in the Australian Institute of Company Directors' guiding principles of good governance.

### *Options*

#### Option 1 – Amend legislation

It is also proposed that amendments be made to the Mining Safety Acts so that it is explicit that the BoE is subject to the direction and control of the Minister. This would not include the decisions that the BoE makes with respect to the issue or grant of notices, certificates and registrations. This would help alleviate a minor concern expressed by one stakeholder about the Minister being able to control the BoE.

This proposal is similar to the legislative framework for other government boards[42] which are subject to the direction of the Minister with the exception of decisions made by the board regarding administrative functions such as registrations, certifications etc.

Precedent for this approach also exists in NSW WHS mining legislation[43] whereby the NSW Mining and Petroleum Competence Board is subject to the control and direction of the Minister.

It is also proposed that the membership and conduct of BoE provisions be amended to provide for the following:

- The chairperson is independent of both the regulator and the Queensland mining industry.
- At least one member of the BoE must have demonstrated experience and proficiency with contemporary practices in assessing competence and need not hold a certificate of competency.

### Impacts and benefits

The proposed amendments to the structure of the BoE to ensure that there is an independent chairperson and a member of the board with competency assessment experience will provide improved accountability and assurance that key mining personnel are competent. The BoE undertake an essential role, working towards providing a safe working environment in mining. Their vision is to deliver competent statutory officials to the industry who can contribute to an industry achieving zero serious harm. It is the role of the BoE to ensure that key mining personnel are not only qualified, but also competent in dealing with potential hazards associated with mining. With the Minister being responsible for the operation of the BoE, it is prudent to ensure that this aspect of the BoE's governance is legislated.

With the chairperson responsible for leading and directing the activities of the BoE as well as the need for a board member who is skilled in the assessment of competencies, the ideal candidate for the independent chairperson would have substantial experience with corporate governance and certificate of competency schemes or work, health and safety legislation.

| Costs | Benefits |
|---|---|
| The costs of running the BoE would not increase significantly. Any inspector on the BoE is not entitled to the renumeration for | The BoE will have enhanced accountability and improved governance. |

[42] Such as the Surveyors Board of Queensland (Part 2 of the *Surveyors Act 2003*), the Board of Architects of Queensland (Part 5 of the *Architects Act 2002*) and the Board of the Queensland College of Teachers (Chapter 10 of the *Education (Queensland College of Teachers) Act 2005).*

[43] Section 64 of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013.*

| | |
|---|---|
| their role. The remuneration for board members is $500 per meeting while for the chairperson it is $650, for meetings of duration of four hours or greater. In the financial year 2019-20 the total amount incurred by the board for meeting attendance fees was $31,863. Expenditure for travel and related meeting expenses was $27,483. The remaining $4,380 was remuneration claimed by board members in accordance with their entitlements. | |
| | Will provide greater certainty that key mining personnel will be qualified and competent in dealing with potential hazards associated with mining. |
| | An independent chair would be better positioned to ensure interaction between members remains focussed towards achieving the board's objectives, given there may be disparate views from different members from government and industry. |

### Option 2 – Status quo

This option would not allow the objective of meeting 'best practice' outlined in the Australian Institute of Company Directors' guiding principles of good governance nor the handbook for Queensland Government Boards developed by DPC. This could potentially affect the BoE reputation as an independent and impartial board.

The Minister's direction and control over the BoE could be included in the terms of reference for the board, however without the enabling legislation there would be no compulsion for the Board to do this. Ideally the Minister's authority to give directions should be both legislated and covered in the terms of reference for the board.

Careful consideration of potential board members competencies may go some way towards meeting '*best practice*' if suitable candidates also possess the mining prerequisites however it is both unlikely that such a candidate exists and, if not specifically required by legislation, it is not guaranteed that such a candidate would be chosen.

*Results of consultation*

The chairperson is independent of both the regulator and the Queensland mining industry

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 17 | 13 | 3 | 1 |

Thirteen stakeholders expressed support for a chairperson who is independent of both the Queensland government and the mining industry. Kestrel stated that "an independent chairperson will not be wedded to government policy or industry history will be able to give independent judgement, neutralise any conflicts that may arise, challenge assumptions and provide fresh perspectives."

Whilst supportive Glencore noted that the rest of the BoE will not necessarily be independent and that the currently legislation requires an inspector nominated by the chairperson must preside in the chair's absence. Further, Glencore felt that making the board subject to the direction and control of the Minister may erode the benefits of an independent chairperson.

The need for an inspector to preside over the board in the absence of the chair is designed to ensure that there is a chair for every meeting. This will not be an ongoing appointment. As a Government Board established under a Queensland Act of Parliament the Minister is responsible to Parliament for the operation of the Board. The Minister therefore must have the authority to direct boards within their portfolio. It should be noted that the proposal is for the BoE to maintain its independence regarding issuing or granting of notices, certificates and registrations. Further, whilst there is need for a level of executive control, there would be limited circumstance when the Minister would deem it necessary to direct the board.

MMAA expressed concern that a person who is not qualified and experienced in the management of a coal mine would not be able to perform any of the functions of the board listed in section 185 of the CMSHA. However, a chair of a government board has specific functions as outlined in the *Guide for members of Queensland Government Boards, committees and statutory authorities* which are distinct from the functions of the actual Board. The chair of the BoE will be well supported by the remainder of the board members who, apart from the member with specific expertise in the assessment of competencies, must have the mining experience listed above. This stakeholder was also sceptical that only an 'outsider' could manage dispute resolution between members of the board. However, there is no intention for the chair to be an 'outsider', just not currently working within government or the industry.

The MEU also does not support the chairperson being independent from the regulator or industry. They have proposed amendments to the existing framework of the BoE which is not the subject of this package of amendments. MEU cite the Johnstaff review which called for clarification of CMSHAC and BoE functions. The Johnstaff review was wide-ranging and some of the recommendations are longer term considerations which require further development and will be looked at over the longer term.

*At least one member of the BoE must have demonstrated experience and proficiency with contemporary practices in assessing competence and need not hold a certificate of competency:*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 17 | 16 | 1 | N/A |

Seventeen (17) stakeholders responded to this aspect of the proposal with sixteen expressing their support. Glencore added that "It would be beneficial to the composition of the BoE that at least one (although preferably more) members have appropriate experience in the assessment of competencies in the mining context. This will ensure:

- exams are written in such a way as to assess practical safety and health management in a mining context and not just a rote understanding of provisions of the CMSHA and CMSHR;
- exams are assessed consistently;
- contemporary methods of assessing knowledge are applied to assessing competencies of safety critical roles."

There was one dissenting view with the MEU believing that it would be more important for the Board members to have the requisite competency and experience related to industry. With each member of the board having to have at least ten years practical experience in the mining industry and holding a certificate of competency under one of the Mining Safety Acts, and at least six of the board members currently engaged in the mining industry, this aspect is adequately covered. This extensive mining experience will be available for the member who has demonstrated experience in the assessment of competencies to draw upon.

*Final proposal*

Part 10 of the CMSHA will be amended to make it explicit that the BoE is subject to the direction and control of the Minister. This power will be limited to the way in which the Board is to administer its statutory functions rather than in relation to how it makes decisions with respect to the issue or grant of notices, certificates and registrations.

Precedent for this proposal exists in both Queensland and NSW legislation with the NSW WHS mining legislation (section 64 of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*) stating that the NSW Mining and Petroleum Competence Board is subject to the direction and control of the Minister.

To ensure that the board operates with maximum efficiency and is beyond reproach with its structure, governance and performance, the following amendments will be made to the structure of the board outlined in the Mining Safety Acts:

1. The appointment of an independent chairperson.
2. The appointment of a person to the BoE with demonstrated expertise or experience in the assessment of competence without having to hold a certificate of competency.

## *Consistency of Resources Safety Acts*

The RSHQ Act commenced on 1 July 2020, establishing RSHQ as an independent statutory body responsible for regulating worker safety and health in Queensland's resources industries. RSHQ is responsible for administering safety and health legislation applying to Queensland's resources industries under the CMSHA, MQSHA, Explosives Act and PG Act. While the resources sector is diverse there are also many commonalities between and within the different industries. Ensuring consistency across the resource safety and health legislative framework provides stability and certainty for the entire sector wherever possible whilst retaining the flexibility to respond to specific industry requirements.

### Court jurisdiction for prosecutions

*Issue*

The Resources Safety Acts have differences in relation to which court deals with proceedings for offences (prosecutions) and the consequent appeals from these decisions. Below is a brief overview of how each of the Acts deals with matters:

- *Coal Mining Safety and Health Act 1999* - A prosecution for an offence against this Act is by way of summary proceedings before an industrial magistrate (see section 255). Note that this excludes industrial manslaughter.
- *Mining and Quarrying Safety and Health Act 1999* - A prosecution for an offence against this Act is by way of summary proceedings before an industrial magistrate (see section 234). Note that this excludes industrial manslaughter.
- *Petroleum and Gas (Production and Safety) Act 2004* - Proceedings for an offence against this Act, are to be heard and decided summarily (see section 837). Therefore, the prosecution would be heard before a Magistrates Court. Note that this excludes industrial manslaughter.
- *Explosives Act 1999* - A proceeding for an offence against this Act, must be taken in a summary way under the *Justices Act 1886* (see section 118). Therefore, the prosecution would be heard before a Magistrates Court. Note that this excludes industrial manslaughter.

The result of these provisions is that Mining Safety Acts provide that prosecutions for offences under those Acts are by way of summary proceedings before an Industrial Magistrate. This allows for an appeal right to the Industrial Court (section 556 of the *Industrial Relations Act 2006*). However, a further appeal to the Court of Appeal can only be made on the grounds of error of law; or excess, or want, of jurisdiction (section 554 of the *Industrial Relations Act 2006*).

In contrast, the Explosives Act and PG Act have prosecutions heard under the mainstream court system which ensures that there are rights of appeal from the Magistrates Court to District Court, and on to the Court of Appeal and High Court.

### *Rationale for government action*

Greater consistency in the court jurisdiction for prosecutions and appeal rights for defendants and the regulator across the Resources Safety Acts and the WHSA is the driver for the reforms. Greater consistency would provide a more equitable approach. Currently it is only the WHS Prosecutor who brings proceedings for serious offences under the Resources Safety Acts and may also bring proceedings for other offences as well.

| Source | Evidence |
|---|---|
| Previous consultation | In the 2013 CRIS, alignment of court jurisdiction was raised as a proposal. There was support for matters to be heard by a magistrate under the Justices Act 1886 (Qld) because it removes the difficulties inherent with specialist courts. The majority of responses to the RIS supported the proposal of moving mining safety and health proceedings away from the Industrial Magistrates' jurisdiction to mainstream courts and appeals.<br><br>At the time these amendments did not proceed however, it is proposed to proceed with these amendments under the current CRIS. |

### *Objective of government action*

The objective is to ensure that there is consistency in which courts hear prosecutions under the Resources Safety Acts and to provide equitable appeal rights for all defendants for Resources Safety Act prosecutions.

### *Options*

#### Option 1 – Amend legislation

It is proposed that amendments are made to the Mining Safety Acts to move prosecutions away from the Industrial Magistrates' jurisdiction to the Magistrates Court. This would result in prosecutions (excluding industrial manslaughter offences, which are heard in the District Court) under the Resources Safety Acts being heard in the Magistrates Court and would provide for all appellants to have the same appeal rights through the court hierarchy.

By doing this, the Resources Safety Acts will align, all defendants will have the same appeal rights and there will be alignment with the WHSA. The proposed amendments work within the

current legislative framework for mine safety without replicating the WHSA provisions, preserving the necessary distinctions between the two frameworks.

It is usual practice for summary offences across legislation to be heard by the Magistrates Court and therefore it is logical that offences against the Resources Safety Acts, which are summary in nature (excluding industrial manslaughter offences) are heard in the same manner by the Magistrates Court.

### Impacts and benefits

The proposed amendment will only impact those who have contravened the relevant legislation.

| Costs | Benefits |
|---|---|
| There will be no increased costs to Government as RSHQ is part of the State of Queensland and therefore no payment of filing fees is required. | Provides a consistent court jurisdiction for prosecutions across the Resources Safety Acts and with the WHSA. |
| Professional costs incurred by the regulator or a defendant will depend on the nature of the matter (for example the complexity or technicality may influence the costs). Whilst there is a scale of costs for the Magistrates Court, there is discretion for costs to be awarded above the scale for cases that involve special difficulty or complexity. Costs can be awarded in the Industrial Magistrates Court also and the extent of these costs would similarly be dependent on the complexity involved for the matter. | Ensures that regardless of which of these Acts a prosecution arises under, they will all have the same appeal rights. |

### Option 2 – Status quo (do nothing)

No action will involve maintaining the status quo and will not resolve the issue of inconsistent legislative provisions across the Resources Safety Acts and the inequitable appeal rights under the different Acts. This identified issue can only be resolved through legislative amendments and therefore it is not feasible to proceed with this option as it will not meet the policy objectives.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 6 | 3 | 2 | 1 |

Six (6) submissions addressed this topic. The majority (Kestrel, the MEU and an anonymous industry stakeholder) supported option 1, either wholly, partially or in principle. Glencore and the MMAA preferred option 2 and the AWU did not expressly provide support for either option.

The stakeholders who raised concerns with (and did not support) option 1 were of the view that prosecutions for mining safety and health laws are substantially different (to matters for the Magistrates Court) and that precedents from the existing specialist industrial court stream could be compromised. Whilst this proposal affects the court jurisdiction for summary offences under the CMSHA, the Magistrates Court (and higher courts) will still interpret the CMSHA for these matters, and they are not prevented from continuing to apply or consider precedents previously established by an Industrial Magistrate (or the Industrial Court).

Kestrel, who partially agreed with option 1, stated that the Magistrates Court typically have a very high case load and do not specialise in industrial workplace matters. They proposed a hybrid model for the Mining Safety Acts where matters are still heard by an industrial magistrate but can be appealed to the District Court, Court of Appeal and High Court. The AWU similarly proposed an alternate court stream–that prosecutions were taken to the Queensland Industrial Relations Commission and that union involvement should be engaged where needed. However, both proposals will not resolve the issue of inconsistent legislative provisions across the Resources Safety Acts and the WHSA. In relation to Kestrel's hybrid model, it is also not viable to change the court appellate system for the Industrial Magistrates Court for only CMSHA and MQSHA prosecutions.

Glencore raised concerns that changing the jurisdiction will incur unnecessary costs. They noted a benefit of the existing jurisdiction for technical issues identified during preliminary stages of a matter to be appealed to the Industrial Court. Having the same court jurisdiction for prosecutions across the Resources Safety Acts and the WHSA, provides an advantage of consistency for all litigants including for appeals and a consistent resource safety legislative framework. This advantage significantly outweighs the matter raised by the submission.

Glencore also noted that there are other functions which the industrial court system serves under the WHSA, such as hearing WHS disputes and the issuing of WHS entry permits. They said

it was unclear in the CRIS if such functions are also proposed to be transferred from the industrial court system. This proposal does not intend to transfer the other existing court functions (for an Industrial Magistrate or the Industrial Court) that don't relate to proceedings for summary offences.

*Final proposal*

The final proposal is outlined in Option 1 above - amending the Mining Safety Acts so that prosecutions are heard before the Magistrates Court (excluding industrial manslaughter, which is heard in the District Court) will align these Acts with the Explosives Act, the PG Act and the WHSA. This approach will ensure consistency for all litigants and a consistent resource safety legislative framework in relation to the jurisdiction of prosecutions. This will also align with other legislative approaches in relation to the way that summary offences are usually heard. Finally, this approach will also achieve equity in the appeal options available to litigants.

## Commencement of offence proceedings

*Issue*

There is a lack of consistency across the Resources Safety Acts in relation to the timeframes for commencing criminal prosecutions (excluding industrial manslaughter). This has resulted in the commencement timeframes varying greatly based on which Act a prosecution was commenced under.

In some instances, the timeframe for commencing a prosecution is only linked to a timeframe for when a matter comes to the notice of a complainant – like the PG Act. In other instances, there is also an alternate timeframe for commencing a prosecution that refers to a time after the commission of an offence as shown below.

- CMSHA, section 257 and MQSHA, section 236 – the latest of the following periods to end: one year after the commission of the offence or six months after the offence comes to the complainant's knowledge, but within three years after the commission of an offence.
- Explosives Act, section 118(6) – a proceeding may be started within the latest of the following periods to end: one year after the offence is committed or one year after the offence comes to the complainant's knowledge, but within two years after the offence is committed.
- PG Act, section 837 (6) – two years after the offence comes to the notice of the complainant.

The PG Act approach is in alignment with the WHSA (under section 232).

### *Rationale for government action*

It is inequitable to have different timeframes for commencing prosecutions under the Resources Safety Acts. Prosecutions under the Resources Safety Acts concern serious accidents and fatalities and require complex investigations. Therefore, sufficient time for conducting complex investigations to obtain the necessary evidence to commence proceedings is paramount to a potentially successful outcome. Successful prosecutions provide a deterrent effect as well as justice for the families of injured or deceased workers. It should not be the case that whether charges can be laid, and a successful prosecution potentially carried out – that the process is inadvertently determined by an arbitrary timeframe in the Resources Safety Act that the offence occurred under.

### *Objective of government action*

The objective is to have consistent timeframes for the commencement of prosecutions across the Resources Safety Acts. This will provide equity for defendants and means decisions to prosecute are not affected arbitrarily by time limitations. It will also ensure that there is sufficient time to conduct complex investigations.

### *Options*

#### Option 1 – Amend legislation

It is proposed to amend the Mining Safety Acts and the Explosives Act to ensure consistent timeframes for commencing prosecutions across all of the Resources Safety Acts. These amendments will provide a time period to commence a prosecution within two years of the offence coming to the notice of the complainant. This proposed change is also consistent with the WHSA. The proposed amendments work within the current legislative frameworks for mine safety and explosives safety without replicating the WHSA provisions, preserving the necessary distinctions between these frameworks that ensure the appropriateness to the high hazard industries to which the Mining Safety Acts and the Explosives Act apply.

It is not intended to amend the time period relating to an offence involving a breach of an obligation causing death and the death is investigated by a coroner. There is already a consistent two-year timeframe to commence proceedings across the Resources Safety Acts where there is a death that is investigated by the coroner.

### Impacts and benefits

Stakeholders will only be affected if they have potentially breached the legislation and therefore subjected to prosecution.

| Costs | Benefits |
|---|---|
| There are no significant economic, social or environmental impacts. | Consistency and alignments across the Resources Safety Acts resulting in a more equitable approach. |
| | Allows sufficient time to gather evidence and undertake a robust investigation which increases the likelihood of successful prosecutions. |
| | Successful prosecutions act as a deterrent for future actions leading to improved safety and health outcomes. |

### Option 2 – Status quo (do nothing)

If the status quo is to be maintained there will be a failure to have consistent provisions in relation to the commencement of prosecutions. This will retain an inequitable approach. If serious accidents and fatalities are not prosecuted due to arbitrary timeframes to commence a prosecution, there will be no deterrent and safety and health outcomes will not be improved. If sufficient time is not available to gather appropriate evidence prosecutions will be compromised. As a result, maintaining the status quo could also significantly impact the injured worker or the family of a deceased worker.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 6 | 1 | 3 | 2 |

Six (6) submissions addressed this topic. The MEU supported option 1 (to amend the timeframes in the legislation). Most stakeholders (Anglo American, Glencore and the MMAA) preferred option 2 (keeping the status quo), noting that the current timeframe (particularly for the CMSHA) is well understood and provides adequate time for investigations to be undertaken.

Both Kestrel and an anonymous industry stakeholder did not explicitly confirm support for either option, but both responded that any change to the timeframes should have a defined maximum timeframe. Anglo American raised a similar concern that aligning the timeframes with the PG Act will result in an indefinite limitation period.

Whilst the current timeframe of 12 months is adequate for some serious incidents or offences, a longer timeframe (of 'within two years of the offence coming to the notice of the complainant') is required for more complex, serious accidents that need sufficient time for robust investigations to obtain the necessary evidence to commence proceedings. If serious accidents are not successfully prosecuted due to arbitrarily shorter timeframes to commence a prosecution, there will be no deterrent for future actions and safety and health outcomes will not be improved.

The proposed timeframes will be modelled on the existing timeframes under the PG Act as well as the WHSA which is based on the national WHS laws. Both Acts cover a wide range of industries, which are already subject to the timeframe of 'within two years of the offence coming to the notice of the complainant'. In any event, the Office of the Queensland Parliamentary Counsel would draft the wording for the amendments and there will be consultation with stakeholders on a draft Bill.

The MMAA's response also raised concerns about their members' experiences with the suspension or cancellation of certificates of competency for alleged offences. They stated that there should be a timeframe for a notice of intention to be issued after an offence as well as a timeframe in which a decision must be made. RSHQ notes that a court may suspend or cancel the certificate of competency of the person convicted of an offence against the CMSHA, as part of the prosecution. Additionally, the CEO may suspend or cancel a certificate of competency if there are the stipulated grounds in the CMSHA including contravention of a safety and health obligation. There are natural justice requirements around this process, including the giving of notice and providing the person with an opportunity to make a written submission within 28 days. The CRIS did not contain a proposal to make changes to this process.

### *Final proposal*

The final proposal is outlined in Option 1. The proposed timeframe amendments to the Mining Safety Acts and the Explosives Act to align with the PG Act (within two years of the notice of the complainant) will ensure that there is consistency, equity and alignment across the Resources Safety Acts. This will enable robust investigations to be undertaken into serious accidents and fatalities as well as successful prosecutions that will act as a deterrent and provide justice for the workers and their families. These amendments will facilitate improved safety and health outcomes.

## Maximising reporting of safety incidents – protection from reprisals

*Issue*

Reporting safety issues is considered paramount to building a good reporting culture. Protection from reprisals for workers should they raise a safety concern has been built into the Resources Safety Acts. To be effective, these offences should carry significant penalties and as such a maximum penalty of 1,000 penalty units are prescribed for the equivalent offence under the WHSA. Both the Mining Safety Acts replicate this level of penalty for reprisal offences. The same level of penalty is not found in the Explosives Act and the PG Act, where this protection is equally important.

Additionally, the current offence provision is ambiguous, lacking a clear definition of the word 'detriment' which is fundamental to the application of the provision.

Rationale for government action

To help improve safety outcomes throughout the mining sector, more than 52,000 mine and quarry workers joined management and union representatives attending 'Safety Reset' sessions during July and August 2019. This attendance represents more than 95 per cent of Queensland's mine and quarry workforce. One of the notable themes identified in this survey, was that safety concerns could not be raised without fear of reprisal.

The Brady Review emphasised the need to report safety issues in keeping with HRO theory which considers a safety culture to be a reporting culture. The Brady Review indicated that there is under-reporting of safety and health incidents and a need to maximise the probability of reporting.

The BoI Report (Part I) also supports the adoption of the principles of HRO theory by the mining industry as a whole. This report contains substantive recommendations for the improvement of safety in Queensland coal mines and many of these recommendations rely on adequate reporting. Part II of the BoI Report is even more explicit regarding encouraging reporting of safety issues and the need to negate fears of reprisal, that is, someone causing detriment to another person, because they believe that the person has made a safety complaint.

Part II of the Report includes Recommendation 29, regarding the application of the reprisal offence that exists in the CMSHA with a view to strengthening protections for workers. The recommendation suggests that strengthening this provision may involve including a definition of 'detriment'.

To maximise reporting workers must feel secure enough to raise safety concerns without fear of reprisal. To be effective, these offences should carry significant penalties and as such a

maximum penalty of 1,000 penalty units are prescribed for the equivalent offence under the WHSA. Both the Mining Safety Acts replicate this level of penalty for reprisal offences.

Increased protection from reprisals is aimed to provide the workers with confidence when reporting safety related issues with the ultimate aim of increasing the level of reporting and identifying potential failures which, if undetected, could lead to serious incidents. Increased reporting supports an improved safety culture and improved safety and health outcomes in the resources sector. As evidenced in the Brady Review and supported by the BoI findings increased reporting will assist with increased safety outcomes and help the resources industries become HROs.

| Source | Evidence |
|---|---|
| BoI Report, Part II | *Finding 96* - The term 'detriment' in sections 275AA and 275AB of the Act is not defined.<br><br>*Finding 97* - Prompt and thorough investigation of reprisal complaints, and the provision of appropriate feedback to complainants, will reassure workers generally that such complaints are taken seriously, and will also enhance the prospects of success in a prosecution. |
| Safety Resets | To help improve safety outcomes throughout the mining sector, more than 52,000 mine and quarry workers joined management and union representatives attending 'Safety Reset' sessions during July and August 2019. This attendance represents more than 95 per cent of Queensland's mine and quarry workforce. One of the notable issues identified, was that safety concerns could not be raised without fear of reprisal. |
| State Development, Natural Resources and Agricultural Industry Development Committee (the Committee) | In its report on the Mineral and Energy Resources and Other Legislation Amendment Bill 2020, the Committee considered that there was a need to ensure that workers felt safe to make safety complaints, without reprisal action being taken. The committee also formed the view that to ensure there is consistency in protection of the safety and health of all workers across all Queensland industries the penalty for reprisal action under the Mining Safety Acts should align with the reprisal provisions in the WHSA. |
| Transport and Resources Committee | In its report on current practices and activities of the coal mining industry to cultivate and improve safety culture, published in February 2023, a recommendation was included that 'the Minister consider amendments proposed in the Consultation Regulatory Impact Statement strengthening protections against reprisal with a view to legislatively implementing them' (Recommendation 10). |

### *Objective of government action*

The key objective for government action is to ensure that the current protection from reprisals afforded to all workers in the resources sector is clear and unambiguous. Increased protection

from reprisals is aimed to provide the workers with confidence when reporting safety related issues with the ultimate aim of increasing the level of reporting. Increased reporting supports improved safety and health outcomes in the resources sector and is in keeping with HRO theory.

*Options*

### Option 1 – Amend legislation

To achieve consistency across the suite of resources safety legislation it is proposed that the penalties for the same offence in both the Explosives Act and the PG Act be amended to increase the currently prescribed 40 penalty units to 1,000 penalty units. It is proposed that a definition of 'detriment' be provided to ensure the meaning of the current provisions for reprisal offences across the Resources Safety Acts is clear. Without the inclusion of a clear definition of 'detriment', the provision will remain ambiguous and difficult to enforce.

There are several different definitions of 'detriment' found in contemporary government legislation; however, perhaps the most applicable and one that is widely accepted is contained in the *Public Interest Disclosure Act 2010* (Qld) where the definition of detriment includes:

a) Personal injury or prejudice to safety; and
b) Property damage or loss; and
c) Intimidation or harassment; and
d) Adverse discrimination, disadvantage or adverse treatment about career, profession, employment trade or business; and
e) Financial loss; and
f) Damage to reputation, including, for example, personal, professional or business reputation.

### Impacts and benefits

| Costs | Benefits |
|---|---|
| Obligation holders will only incur a higher penalty if there is noncompliance. The courts maintain the discretion to impose appropriate penalties depending on each individual case. | Strengthening the maximum penalties for reprisals has the benefit of deterrence due to potentially higher penalties. |
| | Clearly defining 'detriment' will further strengthen the provision and ensure clarity. |
| | The social impact of strengthening these provisions is positive with workers feeling confident in reporting safety issues without fear of reprisal. A greater deterrence for reprisals will potentially lead to an increased |

| | |
|---|---|
| | level of reporting and therefore improved safety outcomes. |

### Option 2 – Status quo (do nothing)

If the status quo is to be maintained the inequitable approach across Resources Safety Acts will be retained and the lack of clarity in the provision will continue.

Non-legislative approaches such as raising awareness through training, safety resets and enhancing safety outcomes in workplaces will also be implemented however, without ensuring that workers are adequately protected from reprisals, the issue will remain.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 6 | 4 | N/A | 2 |

The majority of stakeholders who provided a response to this proposal were supportive, with the MEU going further to suggest an increase in penalty to 1,000 penalty units for section 274(2) and (4) of the CMSHA for the following reasons:

- the penalties should better reflect the seriousness of the transgressions
- increase the deterrence of such actions
- consistency with section 275AA of the CMSHA reprisal penalty

The penalty in s 274(2) of the CMSHA relates to a coal mine worker being disadvantaged when they believe that there is immediate personal danger, and they remove themselves and refuse to undertake a task that may place them in immediate personal danger. The reprisal offence in s 275AA has a broader application and is extended to a person raising any type of coal mine safety issue to their detriment. Whilst there are similarities in the provisions each situation would be considered on its merits and alleged offender charged with the appropriate offence. It is considered that there is a place for both provisions at the existing level of penalty.

Section 274(4) of the CMSHA relates to the notification to a subsequent worker which is a different category of offence and therefore no increases to the maximum penalty is proposed.

There were concerns raised by AEISG relating to the increase in penalty as well as whether the offence related to security as well as safety. This increase is for both consistency with the other

three Resources Safety Acts as well as to reflect the serious nature of such an offence. This protection is equally important for the explosives industry as for the rest of the resources sector. The provision in the Explosives Act will continue to apply to both safety and security.

An industry stakeholder expressed some concern regarding the unintended consequences of prosecution action as well as the need to define 'detriment'. RSHQ's compliance and enforcement actions, which are a critical part of preventing serious harm to workers and the community across the Queensland resources industry, is guided by a compliance and enforcement policy. This policy provides guidance when determining a regulatory response and, when applied, will be informed by consideration of the specific circumstances of each matter. Prosecution is only pursued when it is in the public interest to do so and there is sufficient evidence as to be capable of securing a conviction. This may include cases of the most serious and egregious conduct.

Part II of the BoI report includes Recommendation 29, which suggests that strengthening the reprisal offence may involve including a definition of 'detriment'. The definition of detriment would not include appropriate disciplinary action.

*Final proposal*

It is proposed that the legislation is amended as described in Option 1. This will attain consistency across resources safety legislation and strengthen the offence provision. An appropriate deterrence to reprisals for reporting safety issues will ultimately lead to an improved reporting culture across the resources sector.

## Consistent board of inquiry offence provisions

*Issue*

The board of inquiry offence provisions are inconsistent across the Resources Safety Acts. A review of this legislation in 2020 identified inconsistent penalty provisions and additional provisions in individual Acts that are equally relevant to the other Resources Safety Acts.

A whole of Government review led by Department of Justice and Attorney-General in 2020 also identified provisions in the Explosives Act and the PG Act that are incompatible with some human rights provisions of the HR Act.

*Rationale for government action*

### Provision for providing false or misleading statements or document to a board

Sections 73 and 74 of the Explosives Act and section 721 of the PG Act establish an offence for providing false or misleading statements or documents to an inquiry - maximum penalty of 200 penalty units under the Explosives Act provisions and 500 penalty units under the PG Act. Neither of the Mining Safety Acts contain equivalent provisions.

Like the Explosives Act and the PG Act, the Mining Safety Acts have offence provisions for providing false or misleading statements or documents to an inspector/inspection officer/authorised officer/industry safety and health representative. Members of the board of inquiry do not hold these positions, therefore this offence would not apply to an inquiry conducted under the Mining Safety Acts.

It should be noted that offences for providing false and misleading statements or documents to an inspector or similar carry a maximum penalty of 100 penalty units for all Resources Safety Acts except the Explosives Act, which has a maximum penalty of only 20 penalty units.

### Provision for not impeding or obstructing the board

The "Contempt of board" provision under section 75(c) of the Explosives Act provides that a person must not impede or obstruct the board in the exercise of its powers. The CMSHA (section 217), MQSHA (section 214) and PG Act (section 722) do not contain an equivalent provision. Contempt provisions for other Queensland judicial and review authorities under the *Magistrates Court Act 1921*, the *Commissions of Inquiry Act 1950* and the *Queensland Civil and Administrative Tribunal Act 2009* include an equivalent provision.

### Differing penalties

The offence for providing false or misleading statements or document to a board carries a maximum penalty of 200 penalty units in the Explosives Act and 500 penalty units in the PG Act.

The board of inquiry contempt provision is a maximum penalty of 30 penalty units in the CMSHA and the MQSHA. In the Explosives Act and PG Act the maximum penalty is 200 penalty units. Contempt includes interrupting, impeding or obstructing, creating or continuing a disturbance, or anything else that would be contempt of a court if the board of inquiry were a judge acting judicially.

Finally, offences by witnesses at a board of inquiry are prescribed a maximum penalty of 200 penalty units in the PG Act (section 718), while in the Explosives Act (section 72) the maximum

penalty is 40 penalty units. For the equivalent offence in the CMSHA (section 216) and the MQSHA (section 213), a maximum penalty of 30 penalty units is prescribed.

Given that all Resources Safety Acts have similar provisions for the establishment and conduct of a board of inquiry it would be highly desirable that the same offence provisions carry the same penalties across the Resources Safety Acts. The proposed penalties are detailed in Table 8 (below).

*Table 8 – List of offences and maximum penalties applicable*

| Offence | Maximum penalty |
|---|---|
| False or misleading statements or documents to board | 500 penalty units |
| Contempt of Board:<br><br>Interrupt; impede or obstruct; create or continue a disturbance; do anything that would be contempt of court of the board were a judge acting judicially. | 200 penalty units |
| Offences by witnesses:<br><br>Attend; continue to attend; take an oath; answer a question or produce a document. | 200 penalty units |

It is also proposed that the maximum penalty prescribed for providing "false or misleading information" to inspectors or authorised persons in the Explosives Act be increased to 100 penalty units to ensure parity with all other Resources Safety Acts.

### Incompatibility with human rights

Both the Explosives Act (section 75(a)) and the PG Act (section 722(a)) provide that a person must not insult a board of inquiry. The provision limits the freedom of expression because an insult is a subjective consideration and a statement/action/omission that is a cultural or social expression relevant to the person may be considered an insult without any intent by the party to injure the 'insulted' board member. The purpose of the provision is to ensure there is due respect for the operation of a board of inquiry.

On balance, the importance of the purpose does not seem to outweigh the significant impact on the human right and alternatives could be considered. Particularly, while ensuring respect for the operation of a board of inquiry is a proper purpose, the balance of sections 75 and 722 (without subsection (a)) achieves this. Other elements included in the contempt section sufficiently achieve the purpose without a significant impact on the right to freedom of expression.

*Objective of government action*

The objective of government action is to have consistent and contemporary offence provisions that relate to the conduct of a board of inquiry established under any one of the Resources Safety Acts administered by RSHQ.

*Options*

### Option 1 – Legislative amendment

It is proposed to amend the Resources Safety Acts to replicate the Explosives Act provision to not impede or obstruct the board in the exercise of its powers.

It is proposed to increase the penalties discussed above to the level in the most contemporary of the suite of Resources Safety Acts (refer Table 8 above) which reflects the seriousness of the offences and the importance that the government has placed on this type of inquiry.

It is proposed to remove the provisions which refer to insulting the board of inquiry from the Explosives Act and the PG Act.

#### Impacts and benefits

The proposed amendments in relation to the board of inquiry provisions across the Resources Safety Acts will provide consistency, alignment with the requirements under the HR Act and will support boards of inquiry undertaking effective inquiries into serious incidents.

| Costs | Benefits |
|---|---|
| Stakeholders would only be subject to increased penalties if they commit an offence and even then, the court would have a discretion as to the level of penalty imposed. | Where an offence is committed the level of penalty available would be commensurate with the significance of the offence and consistent with other Resources Safety Acts. |
| | It is not anticipated that amending maximum penalties units will increase the number of matters prosecuted before the courts. The amendments are designed to deter this undesirable behaviour. |
| | The benefits to the community of a well conducted, streamlined inquiry into a serious incident are significant. |

Option 2 – Status quo (do nothing)

If the status quo is to be maintained there will be a failure to have consistent penalties for offence provisions that relate to the conduct of a board of inquiry as well as continued incompatibility with human rights provisions of the HR Act.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 3 | 3 | N/A | N/A |

MMAA supports this proposal with the strict caveat that compelling a witness to appear if that appearance could incriminate the witness would not be supported. This is not part of this package of reforms.

Kestrel supports the majority of the proposals but expressed some concern about the removal of the offence to insult a member of the board of inquiry. Kestrel felt that the board should not be exposed to any insults or misconduct which disregards its authority and dignity. Whilst this is acknowledged, it is considered that the provision limits the freedom of expression because an insult is a subjective consideration and a statement/action/omission that is a cultural or social expression relevant to the person may be considered an insult without any intent by the party to injure the 'insulted' board member.

Ensuring respect for the operation of a board of inquiry can be achieved with the remaining elements of the contempt of board offence, that is, to deliberately interrupt, imped or obstruct the board in the exercise of its powers or create a disturbance where the board is conducting its inquiry, or anything else that would be contempt of court if the board were a judge acting judicially. These provisions protect the board.

The purpose of the provision is to ensure there is due respect for the operation of a board of inquiry. This can be met by the abovementioned elements without a significant impact on the right to freedom of expression.

The MEU also expressed support for consistent offence provisions and penalties.

*Final proposal*

As there was support received for this proposal the legislation will be amended as described in Option 1. This will attain consistency across resources safety legislation and remove incompatibility with human rights provisions.

### Consistent penalties for assault and obstruct offences under the Resources Safety Acts

*Issue*

There are inconsistent maximum penalty units (PU) for assault or obstruction of public officers acting under the Resources Safety Acts. These are currently:

- 100 penalty units under the CMSHA
- 100 penalty units under the MQSHA
- 20 penalty units under the Explosives Act

These penalties are also less than those applying in comparable workplace safety Acts (e.g., the WHSA, the PG Act, the *Water Supply (Safety and Reliability) Act 2008* and the *Electrical Safety Act 2002*). Maximum penalties for assault or obstruction under those Acts are at least 500 penalty units (assault can have higher penalties under some Acts). Table 9 details the discrepancy between the Explosives Act, the CMSHA, the MQSHA and the PG Act and similar legislation that has safety at work as an objective, including the WHSA.

*Table 9 – Comparison of maximum penalty unit values*

| Provision under the Resources Safety Acts | Maximum penalty |
|---|---|
| Explosives Act, section 105 - Obstruction of inspectors | 20 penalty units |
| CMSHA, section 181 - Obstructing inspectors, officers or industry safety and health representatives | 100 penalty units |
| MQSHA, section 178 - Obstructing inspectors, officers or district workers' representatives | 100 penalty units |
| PG Act, section 811 - Obstruction of inspector or authorised officer | 500 penalty units |
| Comparable Acts | |
| WHSA, section 188 - Offence to hinder or obstruct inspector<br><br>WHSA, section 190 - Offence to assault, threaten or intimidate inspector | 500 penalty units<br><br>1,000 penalty units or 2 years imprisonment |
| Electrical Safety Act 2002, section 145B - Offence to assault, threaten or intimidate inspector | 500 penalty units or 2 years imprisonment |
| Water Supply (Safety and Reliability) Act 2008, section 485 - Obstructing an authorised officer | 500 penalty units |

*Rationale for government action*

Whilst the incidence of these offences is infrequent (with no occurrences reported from July 2009 to April 2022), the impact of being assaulted at work can be significant and ongoing, and the ripples of these incidents reach beyond individuals themselves, having impacts on family members and employers and on the broader community. Assault and obstruct provisions aim to provide an adequate penalty for such actions against public officers, such as inspectors and officers authorised under the legislation. However, the current offence penalties under the Resources Safety Acts are inconsistent.

*Objective of government action*

The objective is to strengthen the effectiveness of the existing assault and obstruct offence provisions in the Resources Safety Acts.

*Options*

Option 1 – Amend legislation

This option proposes to make amendments to the Explosives Act, CMSHA and MQSHA to bring the maximum penalty for assault and obstruct offences in line with the PG Act and other comparable legislation, which is 500 penalty units.

Impacts and benefits

| Costs | Benefits |
|---|---|
| Stakeholders will only be subject to an increased penalty if they commit an offence and even then, the court will have a discretion as to the level of penalty imposed. | Increased effectiveness in the legislation by having consistent penalties for the same offences across the resources industry. |
| | Inspectors will be better supported and protected when carrying out compliance activities. |
| | Increasing the penalties will enhance deterrence and improve safety and health outcomes. |

Option 2 – Status quo (do nothing)

This option proposes no action is taken on this issue. This means that public officers will continue to work under an approach that is fragmented and does not afford them an equal

level of protection across the Resources Safety Acts in the event of an assault or obstruct incident. Deterrence may not be achieved with such low penalties.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 4 | 3 | 1 | N/A |

Four (4) submissions addressed this proposal. Overall, the majority (the MEU, the QRC and an anonymous industry stakeholder) supported option 1 (to amend the legislation), whilst Kestrel supported option 2 (keeping the status quo).

The MEU further proposed that the relevant CMSHA provision be amended so that it provides for "*an offence to assault, threaten or intimidate an official–including an inspector, ISHR or SSHR or other officer.*" However, option 1 proposes to make the definition of "obstruct" in the offences across the Resources Safety Acts consistent with the definition in s 811(3) of the PG Act (which is defined to include assault, hinder, resist and attempt or threaten to assault, hinder or resist). It is not intended to also broaden the range of individuals currently mentioned in section 181 of the CMSHA–that is, inspectors, inspection officers, authorised officers and industry safety and health representatives.

The QRC and an anonymous industry stakeholder responded that proceeding with option 1 would result in inconsistency with other penalty provisions relating to ISHRs (under sections 116, 117 and 120 of the CMSHA) and suggested that these provisions were also reviewed and aligned. However, these provisions are out of the scope of the CRIS. Their feedback is noted for any future reviews of other penalty provisions.

Kestrel, who supported option 2, suggested that there seemed to be no need to make this change given that there have been no occurrences since 2009. They also did not agree with making this offence provision (in the Explosives Act, CMSHA and MQSHA) consistent with the higher maximum penalty in the PG Act. RSHQ notes that whilst no occurrences have been reported since July 2009, the impact of being assaulted at work can be significant and ongoing, and the effects of these incidents reach beyond individuals themselves, having impacts on family members and employers and on the broader community. Increasing the penalties in the CMSHA, Explosives Act and MQSHA (to match the PG Act) intends to enhance deterrence of these actions. Also, '500 penalty units' is the maximum only and the courts will retain their discretion to impose lesser penalties depending on the circumstances of the breach, and mitigating factors.

*Final proposal*

Option 1 is the final proposal, proposing that the penalty units prescribed under the assault and obstruct offences of the Explosives Act, CMSHA and MQSHA be increased from 20 and 100 penalty units, respectively, to 500 penalty units.

Consistency will strengthen the provisions making them more effective in supporting inspectors carrying out compliance activities and supporting the objects of the Acts, which relate to protecting the safety and health of persons. Increasing the penalties will also enhance deterrence.

No additional compliance costs are anticipated as the offence already exists in the current legislation. It will only impact stakeholders who commit assault or obstruct offences.

## Consistency in penalties for failing to provide help to SSHC representatives and committees

*Issue*

Section 104 of the MQSHA imposes a duty on the SSE to provide help to the SSHC representative and committee. Help is provided through training support, enabling facilities for use of the committee and allowing for regular payment for the time the representatives and committee members are involved with the committee. The current penalty value for failing to carry out the duty under section 104 is 40 penalty units, which is not consistent with similar WHSA requirements under section 79 and the requirement to establish the committee under the MQSHA under section 98, which are 100 penalty units respectively.

The SSHC provides a vital forum for management and workers to come together to discuss systemic safety and health issues and look at ways to improve the SHMS. The intent of having an SSHC is just as important as the intent of helping the SSHC carryout its functions.

*Rationale for government action*

The rationale for government action is to ensure consistency and to ensure that SSHC's operations which focus on providing improvements for safety and health issues are supported.

*Objective of government action*

The objective of the proposal is to be consistent with comparable provisions of the WHSA requirements under section 79 and the requirement to establish the committee under the MQSHA under section 98, which are 100 penalty units respectively. If the legislation imposes a

penalty for not establishing the committee, the same penalty should apply for not facilitating the committee once established.

### *Options*

#### Option 1 – Amend legislation

Option 1 proposes to increase the current penalty value for failing to provide help to the SSHC representative under section 104 of the MQSHA from 40 to 100 penalty units.

#### Impacts and benefits

| Costs | Benefits |
|---|---|
| Stakeholders will only be subject to an increased maximum penalty if they commit an offence and then the court will determine the level of penalty that is imposed. | Increased effectiveness in the legislation by having equally consistent penalties for the same offences across comparable legislation. |
| | Improved support for the operation of the SSHC which will provide improved safety and health outcomes. |

#### Option 2 – Status quo (do nothing)

If no action is taken on this issue the inconsistency in penalties between failing to establish an SSHC and failing to provide help to the SSHC will remain. This creates an anomaly that does not support the objectives of the MQSHA which includes protecting safety and health of persons.

### *Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 3 | 1 | N/A | 2 |

Three (3) submissions addressed this topic. The MEU noted they support option 1 (to amend the legislation). An anonymous industry stakeholder provided detailed reasons for why they did not support option 1 and the MMAA noted they do not support the concepts of SSHCs overall.

It is noted that both the submissions from industry stakeholders concentrated on coal mining operations and the CMSHA, whereas this proposal relates to different operations under the MQSHA. However, both these submissions are relevant to the other proposal to introduce the

SSHC framework to the CMSHA, because it will also include the same maximum penalty proposed for the MQSHA. RSHQ notes that the current framework theoretically provides a scenario where SSEs can at first establish an SSHC (upon request) to avoid a maximum penalty of 100 penalty units, but then subsequently refuse to support that SSHC for a lesser maximum penalty of 40 penalty units. If the legislation imposes a penalty for not establishing the committee, the same penalty should apply for not facilitating the committee once established. Having consistent penalties should serve as a sufficient deterrent (to subsequently refusing to support an SSHC).

*Final proposal*

Option 1 is the final proposal as it creates consistency between comparable legislation, and it removes the current anomaly between the need to establish an SSHC and the need to provide help to the SSHC for carrying out its functions.

## *Operational amendments*

Operational amendments help ensure legislation is kept contemporary and effective, which in turn enables RSHQ to regulate safety and health in the Queensland resources sector more efficiently and effectively. The proposals in this section generally outline improvements which aim to deliver savings for industry stakeholders either directly, or indirectly by providing for system and process improvements.

### Explosives security clearance

*Issue*

New security clearance requirements for explosives came into effect on 1 February 2020. The amendments implemented Government policy to ensure persons with access to security sensitive explosives undergo security assessment; and that persons with domestic violence orders are not suitable to hold a security clearance or explosives authority or to have unsupervised access to explosives.

The Explosives Act currently does not provide for any exemptions regarding security clearances. As a result, employees of licenced weapons dealers who also hold a security sensitive authority under the Explosives Act (e.g. a licence to sell explosives relating to propellant power), are required to hold a security clearance under the Explosives Act in addition to their weapons licence, even though the employee is already required to be licenced under the comparable weapons licencing regime. Both regimes involve criminal history checks and feature continuous monitoring in relation to criminal history and domestic violence, so the imposition of the additional administrative and cost burden on these employees is not warranted given there are no noteworthy community safety and security benefits by applying both regimes.

In addition, an inconsistency has been identified about requirements for the destruction of a person's biometric information (digital photo and digitised signature) held by the regulator when it is no longer required. Currently, this information must be destroyed when an occupational authority or security clearance expires; however, the Explosives Act does not provide a similar requirement for when an occupational authority or security clearance is cancelled or surrendered.

*Rationale for government action*

Employees of licenced weapons dealers are required to hold a current licence under the *Weapons Act 1990* (the Weapons Act) as a condition of their employment if they have access to weapons as part of their job. If an employee of a weapons dealer loses their weapons licence, they will no longer have lawful access to weapons. These same employees are also currently required to hold a security clearance under the Explosives Act if they may have unsupervised access to explosives (e.g., ammunition, propellant powder, etc.) as part of their job.

Applicants for a security clearance and for a weapons licence both undergo similar checks in relation to criminal history and domestic violence and are subject to continuous monitoring in relation to any changes in status by the Queensland Police Service. The current duplicative requirement for licenced employees (i.e., who hold a weapons licence) of weapons dealers to also hold an explosives security clearance imposes an unnecessary additional administrative and cost burden, with no additional safety and security benefits realised.

In relation to biometric information, the Explosives Act requires this personal information to be destroyed when an occupational authority (i.e., prescribed explosives licences) or security clearance expires unless the information is still information is relevant to an investigation, inquiry or proceeding. The intention is that personal information no longer required to be retained by the regulator should be destroyed. However, the Explosives Act is currently silent on the treatment of biometric information in relation to the surrender or cancellation of an occupational authority or security clearance. It should be treated in the same way as following the expiry of an occupational authority or security clearance (i.e., it should be destroyed if no longer needed).

*Objective of government action*

The key objective for government intervention is to remove the current duplicative security screening requirement under the Explosives Act for appropriately licenced employees of weapons dealers. A secondary objective is to ensure the equitable treatment of biometric information held by the regulator following the surrender or cancellation of an occupational authority or security clearance.

*Options*

Option 1 – Amend legislation

It is proposed to amend the Explosives Act in two ways. Firstly, to insert an exemption to the security clearance requirement under section 33(1)(b) of the Explosives Act in relation to employees of licenced weapons dealers where the employee already holds a weapons licence

that is in force. The proposed exemption would only apply to employees of licenced weapons dealers because holding a valid weapons licence is already a requirement for their job – it would not apply for weapons licence holders generally.

Secondly, to the broaden the requirement under section 123AF(2)(a) of the Explosives Act for destruction of biometric information to also apply when an occupational authority or security clearance is cancelled or surrendered.

### Impacts and benefits

It is estimated that there are approx. 200-400 eligible weapons dealer employees state-wide on an ongoing basis that could potentially benefit from the proposed exemption from requiring a security clearance under the Explosives Act. The biometric information proposal is a minor administrative amendment that has no direct impact on occupational authority or security clearance holders. Therefore, an estimate of potential numbers of occupational authorities or security clearances cancelled in any given period or surrendered has not been provided.

| Costs | Benefits |
|---|---|
| No costs to business under this option. | Removes red tape and unnecessary regulatory burden. |
| Government revenue relating to security clearances would be forgone; however, this is expected to have little practical effect as the security clearance application and renewal fees are based on a cost recovery calculation (i.e., are cost neutral). | An employee of a licenced weapons dealer would be eligible for an exemption if the employee holds a weapons licence that is in force. This is a direct short-term saving of $203.40 (cost of application fee for a security clearance in 2021-22) per employee, as well as longer-term costs associated with the five-yearly renewal of a security clearance (cost of renewal fee for a security clearance in 2021-22 is $162.70). In simple terms, the short-term (over five years) estimated collective direct saving to these employees could be up to approx. $81,000 plus any administrative savings (i.e., time taken to complete and submit forms, etc). |
| | Additional time-savings for eligible employees of weapons dealers associated with completing a security clearance application / renewal form and submitting it via a participating Australia Post outlet would also be saved by eligible employees (including periodically for subsequent renewals). |

| | |
|---|---|
| | The biometric information amendment will ensure appropriate destruction of personal information held by the chief inspector will occur when it is no longer required. |

Option 2 – Status quo (do nothing)

This option maintains the status quo and so will not provide a legislative solution to the two matters identified in relation to the security clearance regime established under the Explosives Act. Option 2 would result in ongoing costs to eligible employees of licenced weapons dealers (refer above for details) and would see continuing inconsistency regarding destruction of biometric information following the cancellation or surrender of an occupational authority or security clearance (i.e., versus expiry of the same).

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 6 | 5 | 0 | 1 |

Six (6) submissions addressed this proposal in the CRIS (which recommended option 1) and the responses received were largely supportive:

- 3 stakeholders (AESIG, Kestrel and MEU) supported this proposal
- 2 stakeholders (FDAQ and SIFA) supported this proposal, but thought it did not go far enough
- the remaining stakeholder (NIOA) provided a response that did not confirm if they support or don't support this proposal.

Five out of the six submissions received supported option 1 to amend the legislation to ensure consistent treatment of biometric information and exempt employees of licenced weapons dealers from needing to hold a security clearance. The FDAQ, NIOA and SIFA also commented that the proposed amendments did not go far enough and collectively provided suggestions for further extending the proposed security clearance exemption to also include:

- the holders of a dealer's or an armourer's licence under the Weapons Act;
- employees of armourer's licence holders;
- security guards licensed under the Weapons Act (e.g., in the event they have access to explosives in the course of their employment or contract);

- security guards licensed under the *Security Providers Act 1993* (e.g., engaged at short notice by a licenced weapons dealer or other security sensitive authority holder in response to an incident, accident, or criminal activity); and
- holders of an interstate security clearance, particularly for persons providing services from another state (e.g., transporting explosives).

A security clearance under the Explosives Act is a prerequisite for obtaining and holding a security sensitive authority, including a licence, under the Explosives Act. This is because criminal history and ASIO checks previously undertaken as part of an explosives licence application process (prior to 1 February 2020) are now undertaken in relation to a security clearance application, which provides a higher-level of scrutiny in relation to criminal history and includes continuous monitoring of any changes to a holder's criminal history, domestic violence status, etc. The security clearance requirements also place an obligation on holders of security sensitive authorities to ensure any of their employees who have unsupervised access to an explosive also holds a security clearance.

The FDAQ submission asserted the same rationale for exempting employees of licenced weapons dealers from the security clearance requirement applies to licenced weapons dealers themselves. However, RSHQ disagrees because a security clearance is intrinsically linked to a security sensitive authority under the Explosives Act. Where the holder of a dealer's licence under the Weapons Act is also required to hold a security sensitive authority under the Explosives Act (e.g., a licence to sell explosives in relation to propellant powder or black powder) an exemption to the security clearance requirement for the security sensitive authority holder is not possible as it is needed in relation to their explosives authority. In contrast, an employee, of a licenced weapons dealer who also holds a security sensitive authority, is not required to hold an explosives licence as the employee is able to handle explosives under the authority of their employers' explosives licence - i.e., they may be taken to hold a licence in accordance with section 42 of the Explosives Regulation 2017. Therefore, extending the security clearance exemption to include weapons dealer's licence holders who also hold a security sensitive authority under the Explosives Act is not supported.

Note that a security clearance or licence under the Explosives Act may not be required by a dealer's licence holder (or their employees) if the dealer only sells small arms ammunition at a place approved under their dealer's licence (i.e. and does not sell propellant powder or black powder for which a security sensitive authority under the Explosives Act would be required).

The proposed security clearance exemption for employees of dealer's licence holders who also hold a security sensitive authority under the Explosives Act applies to any employee who is a 'qualified weapons employee' under section 70 of the Weapons Act. This would include an

employee who is employed as a security guard provided the person is a 'qualified weapons employee' – i.e., is at least 18 years old and holds a weapons licence that is in force (e.g., a security licence (guard) under the Weapons Act). Note that an employee, of a security sensitive authority holder, such as a security guard who does not have unsupervised access to an explosive (e.g., if the explosives are secured or locked away) are also not required to hold a security clearance.

In relation to the suggested inclusion of security clearance exemptions for employees of armourers - the proposed security clearance exemption outlined in option 1 is focussed only on employees of dealer's licence holders and not employees of armourer's licence holders because an armourer, who does not also hold a dealer's licence is unlikely to also hold a security sensitive authority under the Explosives Act.

The NIOA submission asserted that licenced security officers under the *Security Providers Act 1993* (Security Providers Act) were originally proposed to be exempt from the security clearance requirements under the Explosives Act. NIOA also asserted that recognition of interstate security clearances was originally also to be a feature of the explosives security clearance regime.

Irrespective of what the original intent may have been, the current security clearance regime reflects the intent of the Parliament of the day in passing the explosives security clearance requirements as part of the *Land, Explosives and Other Legislation Amendment Act 2019*. Moreover, the intent as reflected in the current legislation was to not exempt security officers under the Security Providers Act and to not recognise security clearances from other states or territories. The explosives security clearance regime features superior screening and continuous monitoring, including with regards to domestic violence matters, which is not addressed under the licencing regime established under the Security Providers Act. Similarly, Queensland does not recognise security clearances from other states or territories because the Queensland security clearance regime has different (stricter) requirements, for example, with regards to continuous monitoring of domestic violence status. The existing position regarding these matters is not proposed to be changed.

The SIFA submission also commented that it makes no sense that licenced weapons dealers are required to hold a security clearance if the dealer stores less than 100kg of propellant powder, particularly as a licence to store explosives is only required when storing more than 100kg of propellant powder. This feedback is noted; however, in the scenario described the requirement for a security clearance for the dealer is not related to the storage of propellant powder (if under 100kg), rather it would relate to another explosives authority held by the dealer, which in

the scenario described is likely to be a licence to sell explosives (i.e., as required in relation to selling propellant powder).

The AESIG submission supported option 1, however, sought clarity on why the proposed exemption for employees of licenced weapons dealers does not apply to all weapons licence holders. The security clearance requirement exemption cannot be applied to weapons licence holders generally because, as outline above, a security clearance under the Explosives Act is a prerequisite for obtaining and holding a security sensitive authority under the Explosives Act. Ensuring that persons who hold an authority in relation to a security sensitive explosive also hold a security clearance is a critical way the primary object of the Explosives Act is achieved. Therefore, extending the security clearance exemption to weapons licence holders for obtaining or holding a security sensitive authority under the explosives Act is not supported.

The FDAQ, NIOA and SIFA also raised concerns relating to the commercial transport of propellent powders before an explosives authority (and therefore also a security clearance) is required. Specifically, the 50kg limit for propellent powder (i.e., a security sensitive explosive) was identified as being too low. The FDAQ stated that the onerous security clearance provisions on relatively transporting relatively small quantities of propellant powder are making commercial freight and distribution extremely difficult and costly, due to the lack of suitably qualified freight providers. However, the security clearance requirements have only been in effect since 1 February 2020; and the transport matter has been a long-standing issue as confirmed by the NIOA submission, which indicated the firearms industry has had problems transporting small consumer quantities of propellant powders throughout Queensland (especially in country and rural areas) for the past 23 years. To address this, the FDAQ and SIFA recommended the Explosives Regulation be amended to increase the maximum amount of a propellant powder from 50kg to 100kg prescribed under Schedule 5 (Explosives prescribed for s.50 of the Act) item 6 as this equates to the amount of propellant powder a licensed weapons dealer may store before a specific authority for storing a larger quantity is required. NIOA suggested an alternative approach which would also [more broadly] address the security clearance issue for employees of licenced weapons dealers.

NIOA suggested alternative approach is to amend the meaning of security sensitive explosive under the Explosives Act to provide that propellant power (currently listed without any limit) is only a security sensitive explosive in relation to the holder of a dealer's licence under the Weapons Act and a person licenced to transport propellant powders. The NIOA submission states that this change would not increase the security or safety risk to the community. However, RSHQ disagrees with this statement. Further, RSHQ does not support the suggested amendment to the meaning of security sensitive explosive under the Explosives Act or the proposed increase the maximum amount of a propellant powder from 50kg to 100kg prescribed under the Explosives

Regulation that may be transported without holding an authority or security clearance. These proposed changes pose an unjustified increase in safety and security risk and potentially undermine the security clearance and explosives authority regime.

NIOA, in an addendum, also commented on security clearance exemptions for police and other law enforcement officers. Exemptions are already in place for certain government entities under the Explosives Act; however, RSHQ will consider the NIOA comments further and will consult with the relevant government entities.

Some stakeholders including NIOA, and SIFA sought further consultation on the proposed amendments. Stakeholders will have the opportunity to review the draft legislation when the consultation draft Bill is released in the second half of 2023.

*Final proposal*

The final proposal is Option 1, under which it is proposed to amend the Explosives Act to provide legislative solutions to the matters identified in relation to the security clearance regime. The proposed amendments will remove duplicative security screening requirements for eligible employees of licenced weapons dealers. Specifically, an employee of a licenced weapons dealer would be exempt from needing to hold a security clearance under the Explosives Act where the employee already holds a weapons licence that is in force. The changes also improve the administration of the security clearance regime by ensuring biometric information can be destroyed when no longer needed after an occupational authority or security clearance is cancelled or surrendered.

## Improved training for mine workers

*Issue*

The Mining Safety laws clearly establishes safety and health obligations and protections for mine workers however, without adequate training workers may not be aware of their legislative obligations or the protection that the legislation affords those reporting safety issues. Training requirements are already established in the Mining Safety Acts. The associated regulations provide further detail regarding training and competency requirements. However, the CMSHR does not specifically refer to the legislation in the training provisions.

As mentioned throughout this document, Dr Brady found that “A total of 17 of the 47 fatalities involved a lack of task specific training and/or competencies for the tasks being undertaken. A further 9 had inadequate training.”

To ensure safety of all workers it is fundamental that all workers are cognisant of their legislative obligations regarding safety and health. This includes being aware of the provisions that protect workers from reprisal.

*Rationale for government action*

Appropriate training of workers is critical in ensuring safety within the resources sector. In the BoI Report (Part I), it was recommended that '*RSHQ takes steps to amend the Regulation to provide that the training scheme required by section 82(3) must cover the provisions of the Act and Regulation, including the safety and health obligations imposed by Part 3 of the CMSHA'* (Recommendation 12).

Part II of the BoI Report, found that it is critical that all safety concerns are raised in a timely way without fear of reprisal. As a result of these findings the report recommended that coal mines review their site induction procedures to ensure that all new workers at the mine, are aware of and understand the operation of the general safety provisions (refer sections 274, 275, 275AA and 275AB) of the CMSHA (Recommendation 19).

Training requirements are established in the Mining Safety Acts. The associated regulations provide further detail regarding training and competency requirements. The CMSHA and the CMSHR do not make specific reference to the training covering the legislation (i.e., knowledge about the CMSHA and CMSHR, including obligations, protections, etc.). This is in contrast to the MQSHR which specifies in section 91(f) that induction training and assessment must include appropriate training on the MQSHA and the MQSHR.

To ensure safety of all workers it is fundamental that all workers are cognisant of their legislative obligations regarding safety and health. This includes being aware of the provisions that protect workers from reprisal.

Prescribing essential aspects of training schemes will ensure consistency between mining safety legislation and will contribute to improved safety and health outcomes for mine workers as intended by the BoI.

| Source | Evidence |
|---|---|
| BoI Report, Part I | *Finding 67* - It would be beneficial to safety for the training scheme required by section 82(3) of the Regulation to cover the provisions of the Act and Regulation, including the safety and health obligations imposed by Part 3 of the Act. |

*Objective of government action*

The objective of government action is to provide clarity and consistency with regard to legislative training for coal mine workers, similar to those provided for mines other than coal mine workers.

*Options*

### Option 1 – Amend legislation

Amend the CMSHR to include a requirement for a mine's training scheme to include training on the Act and Regulation. To ensure that legislative obligations and protections are covered in training schemes it is proposed that a provision is included in the CMSHR similar to subsection 91(f) of the MQSHR.

The proposed amendment to the CMSHR is merely a clarifying amendment, making clear that required training must include training on the CMSHA and CMSHR. Mandating training of the statutory obligations is just one part of ensuring training is adequate, the levels of reporting safety issues are at optimal levels, and ultimately improving safety outcomes. However, if this aspect of a workers' obligations is not made explicit in the legislative requirements for training the topic may be overlooked. The proposed amendment accords with the recommendations of the BoI regarding adding a legislative imperative to the training schemes for mine workers. It is far more beneficial to ensure that workers are trained appropriately from the outset rather than identifying this as an issue after a HPI or accident has occurred.

### Impacts and benefits

| Costs | Benefits |
|---|---|
| Training requirements already exist under the Mining Safety Acts and training schemes are outlined in the respective regulations. Clarifying the CMSHR provisions is not envisaged to lead to significant new costs. | Workers are more aware of their protections which will lead to better safety outcomes such as increased reporting. |
| | This is proactive approach which enables intervention at an early stage should training not meet prescribed standards. |

### Option 2 – Status quo (do nothing)

This option maintains the status quo and so will not provide a solution to the disparity between the Mining Safety Acts. The coal mining sector would not be compelled to include legislative requirements particularly in regard to safety and health obligations prescribed in the Mining

Safety Acts, in training packages. There would also be limited compliance and enforcement options available to ensure training is optimal.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 5 | 5 | N/A | N/A |

Five (5) submissions (from the AWU, Kestrel, the MEU, the MMAA and an anonymous industry stakeholder) addressed this topic with all responses expressing support for option 1 in the CRIS (to amend the legislation) or agreeing in principle.

The AWU noted that any training for miners should involve consultation with the relevant union as well. The MMAA also referred to inclusion in *Recognised Standard 11: Training in coal mines.* This standard became subject to its final consultation period in January 2023.

*Final proposal*

The final proposal is Option 1, under which it is proposed to amend the CMSHR to include a requirement for a mine's training scheme to include training on the Act and Regulation.

Identified benefits far outweigh the minimal costs of ensuring a topic is mandatory in training. Mandating training of the statutory obligations is just one part of ensuring training is adequate, the levels of reporting safety issues are at optimal levels, and ultimately the improvement of safety outcomes.

## Gas device approval authorities

*Issue*

GDAA legislation was established to provide a transparent and accountable framework for appointing persons to approve gas devices before they are supplied (relates to a gas device (type A) only), installed or used in Queensland.

The PG Act and equivalent legislation in other Australian jurisdictions distinguish gas devices (type A) and (type B). Generally, gas devices (type A) are mass-produced domestic and light commercial appliances. They are usually found in homes and commercial sites. Some examples include gas stove tops, BBQs, pizza ovens, ducted heating appliances, commercial catering

equipment and hot water systems. A gas device (type B) is any gas device that is not a gas device (type A) – e.g., industrial or commercial appliances, refrigeration devices, a fuel gas system for the propulsion of a vehicle or vessel, etc.

Gas device approval is a standard requirement of Australian and international gas safety regulators. In Queensland, the PG Act requires gas devices to be approved by the chief inspector or the holder of a GDAA before they are supplied, installed or used. Gas device approval helps achieve the safety outcome of ensuring risks associated with flammable, explosive and toxic gas during the operation of devices are controlled and no harm is caused to workers or consumers.

The *Land, Explosives and Other Legislation Amendment Act 2019* sought to establish a transparent process to appoint persons to approve gas devices by the introduction of a new Chapter 9, Part 6A–Approval of gas devices. During the drafting process of supporting subordinate legislation several anomalies were identified in the PG Act provisions potentially affecting the operation and workability of the scheme.

### *Rationale for government action*

Adjustments to the GDAA legislation will improve its effectiveness, transparency, and capacity to respond to emerging gas devices such as hydrogen fuel cells. This includes removing ambiguity around the wording of the section that provides for the approval of gas devices and the written notice that is required for a gas device when being supplied, installation or used; the cancellation and suspension of gas device approvals; and the capacity to establish categories of GDAAs.

#### Approval of devices for supply, installation and use

Section 731AA(1) of the PG Act provides that a person must not supply a gas device (type A) or install or use any type of gas device unless the supply, installation or use has been approved by the chief inspector or a person who holds a GDAA for the gas device. That is, a holder of a GDAA (or the chief inspector) approves the design of the device as being appropriate for supply, installation or use. A gas device must be approved by a GDAA holder or the chief inspector prior to supply, installation or use.

In addition to the GDAA approval process, the chief inspector needs to retain the discretion to be able to approve the installation and/or use of a gas device in unique or innovative situations. An example of this is fuel cell trials, which have been approved by the chief inspector for specific time frames and under conditions that ensure safety and allow Queensland's commitment to hydrogen energy to progress without unnecessarily regulatory obstacles.

The current wording of this section has led to confusion throughout the industry and for the regulator regarding requirements.

### Written notice to be supplied with gas device

Section 731AA(2) of the PG Act provides that a person must not supply a gas device to a person unless a written notice in the approved form is provided which states that the device must be approved for installation and use by either the chief inspector or a GDAA holder. This could be interpreted as only being required for type A devices. However, this notification requirement was only intended for gas devices (Type B) as they are generally individually designed and not a standard device that can be approved en masse.

### The cancellation and suspension of certifications by conformity assessment bodies

The PG Act recognises and relies on the commercial practice by conformity assessment bodies to certify mass-produced gas appliances as meeting specific gas device standards as an approval under the PG Act for these appliances. Under commercial practice processes, certifications can be cancelled and suspended for reasons other than safety, for example:

- product not available for design verification auditing
- manufacturer requests cancellation due to ceasing product production
- approval is transferred to a new approval under a different GDAA.

If cancelled or suspended for a reason other than safety, the regulator needs to ensure that the safety approval for mass produced devices such as BBQs remain in place, otherwise consumers could inadvertently be using an unapproved device. Currently when this occurs, appliance approval is maintained by reliance on section 731AA of the PG Act that allows the chief inspector to approve gas devices. For this system to work effectively the chief inspector must first be aware of the cancellation of the device's approval and secondly must ensure that interested parties are informed. This can be achieved by publishing of a notice advising the chief inspector's approval for these devices on appropriate web sites.

While current provisions are workable, they are not clear and rely on administrative arrangements to ensure that the scheme covers all gas devices adequately.

### Capacity to establish categories of holders of GDAAs

Whilst the PG Act provides for types of gas devices there is no similar provision for categories of GDAA to be established.

The PG Reg refers to a code of practice for GDAA holders. This code sets out the conduct and technical obligations for holders of a GDAA in Queensland and references four different types of GDAA, see Table 10.

*Table 10 – Four different categories of GDAA*

| GDAA category | Scope of gas device approval work |
|---|---|
| type A | Gas device (type A) |
| type A2 | Eligible gas device (type A) |
| type B | Gas device (type B) that are not fuel gas refrigeration devices |
| type B2 | Fuel gas refrigeration devices |

The capacity to assign categories of GDAAs needs to be included in the PG Act to ensure that the gas device scheme has simpler and clearer legislative provisions and flexibility to create additional categories as new gas devices are developed.

### *Objective of government action*

The primary objective of government action is to ensure that the authorising provisions for GDAAs are clear and reflective of relevant industry processes, protocols and procedures, without adding to the regulatory burden.

### *Options*

#### Option 1 – Amend legislation

It is proposed to amend the GDAA provisions in the PG Act so that there is no ambiguity. This would provide a clear framework for the gas device approval scheme which is consistent with the national framework. The provision for different types of GDAA would also future-proof the legislation allowing for the easy inclusion of different types of GDAA as they are required (for instance, for approval of hydrogen fuel cells).

Proposed amendments would include:

1. That gas devices (regardless of type) receive design approval from either the chief inspector or a GDAA holder prior to the supply, install or usage. The chief inspector will retain the ability to approve the installation and use of a gas device.
2. That a written notice in the approved form be supplied with a gas device type B prior to the supply, installation and usage.
3. That a gas device approval by a conformity assessment body remains in place unless there is a safety reason for the approval to be suspended or cancelled.

4. To ensure that the PG Act allows the regulation to provide for different types of GDAA.

### Impacts and benefits

| Costs | Benefits |
|---|---|
| There will be no additional costs on industry or the regulator. | The proposed changes to the GDAA framework will ensure there is clarity for the operation of these provisions and that the current industry practice is reflected. |
| | Non-compliance with the GDAA framework would be able to be appropriately addressed. |

### Option 2 – Status quo (do nothing)

Without legislative amendments the scheme would continue to be managed administratively however if punitive action is to be taken against a person for a breach of this framework it may be difficult to enforce.

#### *Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 1 | 1 | N/A | N/A |

This proposal was supported by MEU, which was the sole responder.

#### *Final proposal*

The final proposal is for the amendments for the GDAA framework outlined in Option 1 be implemented. This will ensure that there are clear provisions and that they are reflective of relevant industry processes, protocols and procedures, without adding to the regulatory burden. At the same time, they will promote consistency with the national framework. The amendments will strengthen the GDAA legislative framework as well as providing clarity for all stakeholders.

## Domestic biogas systems

*Issue*

Homeowners and businesses are looking to emerging technologies to allow them to be more energy efficient and for methods to decarbonise their activities. Home biogas systems are reportedly simple to utilise. Household waste is placed into the digester where it undergoes a bio digestion process to break down the organic waste. The bacteria in the digester system then turns the organic waste into biogas which can be safely stored within the digester or can be used for a number of purposes including heating and the production of electricity. The digestate can then be used in fertiliser or transformed into building materials. Millions of these biogas systems are currently being utilised throughout the world and small-scale domestic biogas systems are now available for use, with householders in Australia being able to purchase them over the internet. Due to the relative ease of acquiring a domestic digester, it is difficult to know how many have been purchased and are in operation in Queensland.

Under current Queensland legislation, domestic biogas systems are regulated as operating plant and any gas devices attached to the biogas installation are classed as gas devices (Type B).

Operators of operating plant must have a safety management system and as part of this, undertake a formal assessment of risk in relation to the operating plant. These requirements are excessive and disproportionate to the risk posed by a small domestic biogas systems.

Gas devices (Type B) have rigorous requirements and have to be approved by the chief inspector or a GDAA holder (GDAA category type B) and be installed by the holder of a gas work authorisation holder (industrial appliances) which has gas work relating to biogas systems within the scope of the authorisation. The installation process of a gas device (type B) requires a risk assessment and so maintains a level of risk mitigation. Gas devices that form part of a biogas gas system include boilers and generators for the production of electricity, which are gas devices (Type B). Currently, all gas work authorisation applicants must apply to RSHQ for the granting of an authorisation and the applicant must provide evidence of having attained the required competencies (e.g., *CPCPGS4023B Install, commission and service Type B gas appliances*) and their documented practical experience. For biogas the practical experience should include knowledge of manufacturers installation instructions, material compatibility with the components of a Biogas system, risk management when producing and/or using Biogas. These requirements are provided for through the application process. Under section 123(b) of the PG Reg, gas work requirements mean the document called ‘Queensland gas work authorisation requirements’ which is currently published on the RSHQ website. This document provides the required competencies for each authorisation category.

There has also been confusion regarding the definition of "industrial appliance." Currently, a number of non-industrial appliances fall under the gas work authorisation category (industrial appliances).

### *Rationale for government action*

Under current Queensland regulation, domestic biogas systems are regulated the same way as an operating plant and any gas devices attached to the biogas installation are classed as Type B devices.

Currently, a small gas device used in a domestic biogas environment is required to undergo a type B gas device approval process and be operated and maintained under an operating plant framework including a safety management system and defined safety positions. This is costly and onerous for consumers trying to reduce their household waste and is a disincentive to potential users.

### *Objective of government action*

The objective of government action is to ensure that the domestic biogas system requirements facilitate growth in the domestic biogas sector; are proportionate to the risk involved, and that safety and health remains protected.

### *Options*

#### Option 1 – Amend legislation

It is proposed that domestic biogas systems become exempt from being operating plant. Cost savings for the consumer will be possible through the removal of the cost of preparing and maintaining a safety management system.

It is proposed that a definition of domestic biogas system is inserted under Schedule 2 of the PG Act, prescribing that a domestic biogas system is a system that consists of a digester, connected pipe and a device used, or designed to produce, store, transport, and use fuel gas up to a consumption rate of no more than 50kW which equates to 180 MJ/hr. There will be no payable safety and health fee.

Gas work in relation to a domestic biogas system would still be undertaken by a person who held an authorisation under Schedule 5, Part 3 of the PG Reg; gas work authorisation (industrial appliances).

A clarifying amendment will be required to Schedule 5, Part 3 of the PG Reg in relation to the authorisation category. There has been confusion regarding the definition of "industrial appliance." Currently, a number of non-industrial appliances fall under the gas work authorisation category (industrial appliances). Therefore, to ensure that the authorisation

category is clear that it accommodates type B domestic appliances as well as industrial appliances it is proposed the Schedule 5 Part 3 will be amended to be gas work authorisation (type B devices and industrial appliances). Currently, the definition of industrial appliance under Schedule 7 of the PG Reg provides 'industrial appliance means a gas device (type B) designed for using fuel gas as a fuel or feedstock in an industrial process'. The proposal is to amend the definition to provide clarity and therefore it should read:

> *"industrial appliance means a gas device (type B) designed for using fuel gas; as a fuel; or feedstock in an industrial process."*

To work on a domestic biogas system, a gas work authorisation (industrial appliances) must be held. Biogas must be within the scope of the authorisation. It is proposed that further requirements in relation to applications for a gas work authorisation in relation to domestic biogas systems would be detailed in the Queensland Gas Work Authorisation Requirements document provided on the RSHQ website.

The installation requirements would include:

- Suitability of materials for digester construction, pipe, fittings and appliance.
- Location and ventilation requirements digester (hazardous area) and appliance (unknown combustion characteristics and toxins).
- Commissioning and combustion testing.
- Maintenance and repair.

To assist owners and gas work authorisation holders of domestic biogas systems further, an information sheet will be published on the RSHQ website to provide guidance on the regulatory and safety requirements for these systems. The information sheet will inform owners of domestic biogas systems about their obligations. This will be supported by the installation and maintenance of the domestic biogas systems by a licensed professional (holder of an appropriate gas work authorisation) to mitigate any hazards and safety risks.

Impacts and benefits

| Costs | Benefits |
|---|---|
| There are no significant costs impacts on the regulator | Cost savings for consumers. |
| | A positive incentive for Queenslanders to consider the purchase of a domestic biogas digester which would provide a renewable and clean source of energy that benefits the environment. |
| | These amendments will also align Queensland with the Federal government initiative of boosting bioenergy opportunities in Australia.[44] |
| | Will provide environmental benefits and reduce regulatory burden while protecting safety at the same time. |

Option 2 – Non-regulatory option

Under this option, no regulatory change would be made. Educational materials could still be provided about how to safely use domestic biogas systems. However, the burden of the regulatory requirements would be significant for consumers of the domestic biogas systems and it would not be proportionate to the risk posed. The non-regulatory option will fail to ensure that the legislation maintains pace with the take up of technological advancements in this space. Additionally, under this option the current burdensome requirements under the legislation may deter consumers from purchasing domestic biogas systems and therefore would fail to achieve the potential positive environmental impacts. Lastly, the only way to achieve clarity in relation to the definition of "industrial appliance" in the legislation is to pursue Option 1.

*Results of consultation*

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 1 | 1 | N/A | N/A |

[44] Australian Renewable Energy Agency, Biogas Opportunities for Australia, https://arena.gov.au/knowledge-bank/biogas-opportunities-for-australia/.

Only the MEU provided comment and they supported the proposal.

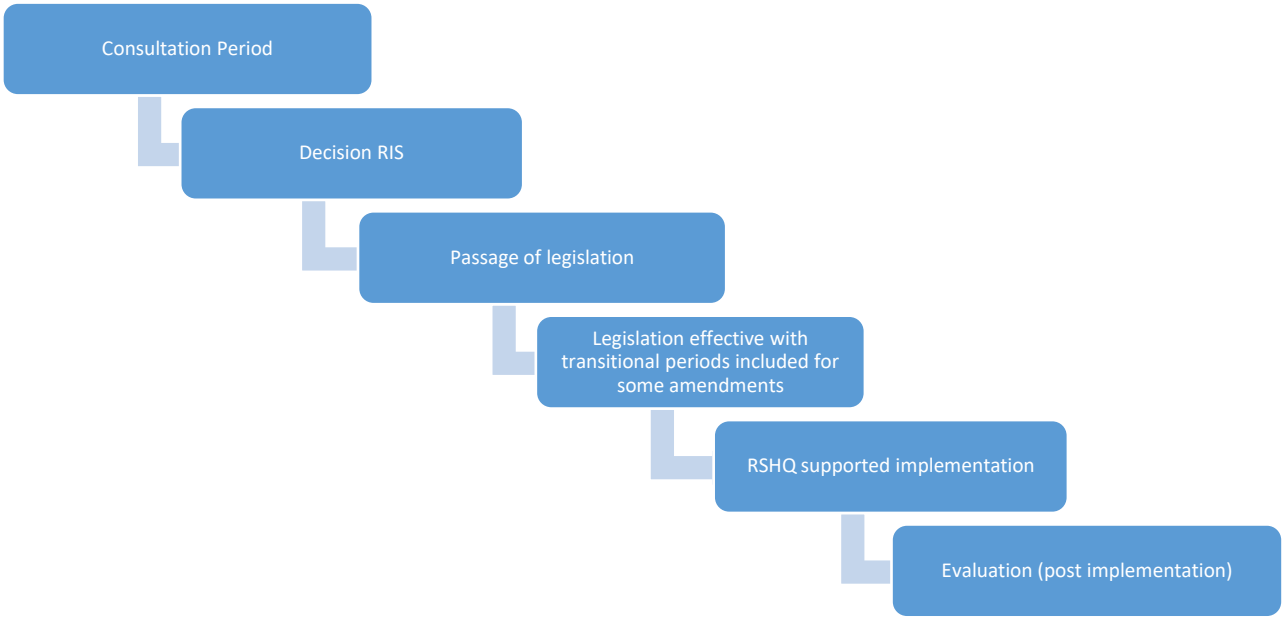
*Final proposal*

The final proposal is that domestic biogas systems will be renamed to limited capacity biogas system to better reflect their usage. The systems will be defined by regulation to allow for flexibility and the incorporation of new and emerging technologies. Upon review, a clarifying amendment will no longer be made to Schedule 5, Part 3 of the PG Reg in relation to the authorisation category. It has been determined that this proposal is no longer required.

These amendments will minimise barriers for domestic biogas system owners or users to engage in the domestic biogas market whilst ensuring safety standards are met and associated risks are managed. This is achieved through streamlining the requirements that apply to domestic biogas system through the removal of onerous requirements that are not proportionate to risk. Safety concerns and risks will be managed through the ongoing requirement to use qualified gas work authorisation holders for installation and maintenance of these systems. Information sheets will also be made available on the RSHQ website advising system operators/users of their requirements.

These amendments will also make the option of having a domestic biogas system a far more attractive and cost-efficient option than it currently is to consumers. From a cost perspective, there are no negative impacts to the community by introducing these amendments.

# Implementation, compliance support and evaluation strategy




Following the consultation period on the CRIS, RSHQ analysed the submissions and prepared a Decision RIS based upon the analysis. RSHQ is working towards introducing the legislative amendments into Parliament in early 2024. The timeframe for passage of the legislation will depend on how long the relevant Parliamentary Committee will need to examine the proposed legislation. The Parliamentary Committee may also conduct public and private hearings and invite interested parties to provide written submissions.

Not all of the approved amendments will take effect from the date Parliament passes the legislation. RSHQ has sought stakeholders' feedback on appropriate transitional periods and for when parts of the reform package requirements should commence. This will ensure that there is sufficient lead up time to the implementation of key reforms such as the additional certificates of competency for key safety roles.

The regulator will support industry throughout the implementation of the proposed reforms. Regular stakeholder communication will be a critical part of the implementation process. RSHQ will continue its usual compliance and enforcement program and will ensure that this program maintains pace with the amendments and their commencement where required.

RSHQ will evaluate the effectiveness of the changes by continuing to monitor the safety performance of industry through inspections and audits, reviewing HPIs and other safety information and discussions with stakeholders. A key part of this evaluation will be the data collection and analysis through the Central Assessment Performance Unit. RSHQ will use the current safety performance data as a baseline and will compare this with the ongoing safety

performance of industry. RSHQ will develop measures to evaluate this safety performance. This data and analysis will also be used to ensure that RSHQ compliance activities are targeted to the highest emerging risk areas for industry.

## Competition principles

The proposals under Option 1 do not restrict competition and are consistent with the Competition Principles Agreement. The cost benefit analysis details the benefits to stakeholders and highlights the achievement of better safety outcomes for minimal cost to industry. These proposals will achieve social objectives of improving workers and affected communities, safety and health in the resources sector. Proposals have been considered with the intent to minimise the impact on industry whilst achieving the greatest safety and health outcomes.

## Consistency with fundamental legislative principles

The fundamental legislative principles under section 4 of the *Legislative Standards Act 1992* (LSA) were considered during development of the proposed regulatory reform options. The proposed reforms will not be inconsistent with the fundamental legislative principles in the LSA. The reforms provide sufficient regard to the rights and liberties of individuals and to the institution of parliament.

# Appendix 1 – Stakeholders who responded to CRIS proposals

| # | Stakeholder | Stakeholder group |
|---|---|---|
| 01 | Anonymous | Individual |
| 02 | Anonymous | Individual |
| 03 | Anonymous | Individual |
| 04 | Bulloo Shire Council | Other |
| 05 | Professor David Cliff | Individual |
| 06 | Australian Flexible Pavement Association (AfPA) | Industry group |
| 07 | Chinova Resources | Industry group |
| 08 | Adam Lines | Individual |
| 09 | Anonymous | Individual |
| 10 | Mine Managers Association of Australia (MMAA) | Industry group |
| 11 | Anonymous | Individual |
| 12 | Cement Concrete & Aggregates Australia (CCAA) | Industry group |
| 13 | Anonymous | Industry group |
| 14 | Stuart Vaccaneo | Individual |
| 15 | Firearm Dealers Association Qld (FDAQ) | Industry group |
| 16 | Queensland Resources Council (QRC) | Industry group |
| 17 | Anonymous | Employee union |
| 18 | Kestrel Coal Resources (Kestrel) | Industry group |
| 19 | Glencore | Industry group |
| 20 | Mining Electrical Safety Association Inc (MESA) | Industry group |
| 21 | Anonymous | Industry group |
| 22 | Aurecon Australasia Pty Ltd (Aurecon) | Industry group |
| 23 | Australian Workers Union (AWU) | Employee union |
| 24 | Anglo American | Industry group |
| 25 | Association of Mining and Exploration Companies (AMEC) | Industry group |
| 26 | NIOA | Industry group |
| 27 | Australasian Explosives Industry Safety Group Inc (AEISG) | Industry group |
| 28 | Anonymous | Industry group |
| 29 | Anonymous | Industry group |
| 30 | Shooting Industry Foundation Australia (SIFA) | Industry group |
| 31 | Anonymous | Individual |
| 32 | Anonymous | Industry group |
| 33 | Mining & Energy Union Queensland (MEU) | Employee union |
| 34 | Australian Petroleum Production & Exploration Association (APPEA) | Industry group |

# Appendix 2 – Summary of stakeholder responses to CRIS proposals

## *Facilitating the growth in HRO behaviours*

### *Introducing critical control management*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| Anonymous (#17) | Employee union | ✓ | | |
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | | | ✓ |
| Adam Lines (#08) | Individual | | ✓ | |
| Anonymous (#01) | Individual | | | ✓ |
| Anonymous (#02) | Individual | ✓ | | |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | ✓ | | |
| Anonymous (#31) | Individual | | | ✓ |
| Professor David Cliff (#05) | Individual | | ✓ | |
| AfPA (#06) | Industry group | ✓ | | |
| AMEC (#25) | Industry group | | ✓ | |
| Anglo American (#24) | Industry group | | | ✓ |
| Anonymous (#13) | Industry group | ✓ | | |
| Anonymous (#21) | Industry group | | | ✓ |
| Anonymous (#28) | Industry group | | | ✓ |
| Anonymous (#29) | Industry group | | ✓ | |
| Anonymous (#32) | Industry group | ✓ | | |
| APPEA (#34) | Industry group | | | ✓ |
| Aurecon (#22) | Industry group | ✓ | | |
| CCAA (#12) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | | | ✓ |
| Kestrel (#18) | Industry group | ✓ | | |
| MESA (#20) | Industry group | | | ✓ |
| MMAA (#10) | Industry group | ✓ | | |
| QRC (#16) | Industry group | | | ✓ |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (27 stakeholders)** | | **13** | **4** | **10** |

*Competency for key critical safety roles*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| Anonymous (#17) | Employee union | ✓ | | |
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | ✓ | | |
| Adam Lines (#08) | Individual | | ✓ | |
| Anonymous (#01) | Individual | | | ✓ |
| Anonymous (#02) | Individual | ✓ | | |
| Anonymous (#03) | Individual | | | ✓ |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | ✓ | | |
| Anonymous (#31) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | ✓ | | |
| Anglo American (#24) | Industry group | | ✓ | |
| Anonymous (#13) | Industry group | | | ✓ |
| Anonymous (#21) | Industry group | | ✓ | |
| Anonymous (#28) | Industry group | ✓ | | |
| Anonymous (#29) | Industry group | | ✓ | |
| APPEA (#34) | Industry group | ✓ | | |
| Aurecon (#22) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | | | ✓ |
| Kestrel (#18) | Industry group | | | ✓ |
| MESA (#20) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| QRC (#16) | Industry group | | ✓ | |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (24 stakeholders)** | | **14** | **5** | **5** |

*Transitional period for competency for key critical safety roles*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | ✓ | | |
| Adam Lines (#08) | Individual | ✓ | | |
| Anonymous (#02) | Individual | | | ✓ |
| Anonymous (#03) | Individual | ✓ | | |
| Anonymous (#09) | Individual | | ✓ | |
| Anonymous (#11) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | ✓ | | |
| Anglo American (#24) | Industry group | | ✓ | |
| Anonymous (#13) | Industry group | ✓ | | |
| Anonymous (#21) | Industry group | | ✓ | |
| APPEA (#34) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | | ✓ | |
| Kestrel (#18) | Industry group | | ✓ | |
| MESA (#20) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (17 stakeholders)** | | **11** | **5** | **1** |

*Proposal for surface coal mine SSEs to be required to hold a surface mine manager certificate of competency*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | ✓ | | |
| Adam Lines (#08) | Individual | | ✓ | |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | ✓ | | |
| Anonymous (#31) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | ✓ | | |
| Anonymous (#13) | Industry group | | ✓ | |
| Anonymous (#21) | Industry group | | ✓ | |
| Anonymous (#29) | Industry group | | ✓ | |
| Glencore (#19) | Industry group | | ✓ | |
| Kestrel (#18) | Industry group | | | ✓ |
| MMAA (#10) | Industry group | ✓ | | |
| **Total (13 stakeholders)** | | **7** | **5** | **1** |

*Proposal for surface electrical engineering managers to be required to hold an electrical engineering manager certificate of competency*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | ✓ | | |
| Adam Lines (#08) | Individual | | ✓ | |
| Anonymous (#02) | Individual | ✓ | | |
| Anonymous (#03) | Individual | ✓ | | |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | | | ✓ |
| Anonymous (#31) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | ✓ | | |
| Anonymous (#21) | Industry group | | ✓ | |
| Anonymous (#28) | Industry group | ✓ | | |
| Anonymous (#29) | Industry group | | ✓ | |
| APPEA (#34) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | | ✓ | |
| Kestrel (#18) | Industry group | | ✓ | |
| MESA (#20) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| QRC (#16) | Industry group | | | ✓ |
| **Total (18 stakeholders)** | | **11** | **5** | **2** |

*Continuing professional development*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| Anonymous (#17) | Employee union | ✓ | | |
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | ✓ | | |
| Adam Lines (#08) | Individual | | ✓ | |
| Anonymous (#02) | Individual | ✓ | | |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | ✓ | | |
| Anonymous (#31) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | | ✓ | |
| AfPA (#06) | Industry group | | ✓ | |
| Anglo American (#24) | Industry group | ✓ | | |
| Anonymous (#13) | Industry group | ✓ | | |
| Anonymous (#21) | Industry group | ✓ | | |
| Anonymous (#28) | Industry group | | | ✓ |
| Anonymous (#29) | Industry group | | ✓ | |
| APPEA (#34) | Industry group | | | ✓ |
| Aurecon (#22) | Industry group | ✓ | | |
| CCAA (#12) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| MESA (#20) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| QRC (#16) | Industry group | ✓ | | |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (24 stakeholders)** | | **18** | **4** | **2** |

*Establish site safety and health committee*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| Anonymous (#17) | Employee union | | | ✓ |
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | | | ✓ |
| Adam Lines (#08) | Individual | ✓ | | |
| Anonymous (#09) | Individual | | ✓ | |
| Anonymous (#11) | Individual | ✓ | | |
| Anonymous (#31) | Individual | | | ✓ |
| Professor David Cliff (#05) | Individual | ✓ | | |
| AMEC (#25) | Industry group | | ✓ | |
| Anglo American (#24) | Industry group | | ✓ | |
| Anonymous (#13) | Industry group | | ✓ | |
| Anonymous (#21) | Industry group | | | ✓ |
| Anonymous (#29) | Industry group | | ✓ | |
| Glencore (#19) | Industry group | | | ✓ |
| Kestrel (#18) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | | ✓ | |
| QRC (#16) | Industry group | | ✓ | |
| **Total (17 stakeholders)** | | **5** | **7** | **5** |

Transitional period for establishing a site safety and health committee framework

| Stakeholder | Stakeholder group | 12 months | 6 months | None | N/A |
|---|---|---|---|---|---|
| AWU (#23) | Employee union | | ✓ | | |
| MEU (#33) | Employee union | | | ✓ | |
| Adam Lines (#08) | Individual | | | ✓ | |
| Anonymous (#02) | Individual | ✓ | | | |
| Anonymous (#03) | Individual | ✓ | | | |
| Anonymous (#09) | Individual | | | ✓ | |
| Anonymous (#11) | Individual | | ✓ | | |
| Professor David Cliff (#05) | Individual | ✓ | | | |
| Anonymous (#13) | Industry group | ✓ | | | |
| Anonymous (#32) | Industry group | | ✓ | | |
| Chinova Resources (#07) | Industry group | ✓ | | | |
| Glencore (#19) | Industry group | ✓ | | | |
| Kestrel (#18) | Industry group | | | | ✓ |
| MMAA (#10) | Industry group | | | | ✓ |
| Bulloo Shire Council (#04) | Other | ✓ | | | |
| **Total (15 stakeholders)** | | **7** | **3** | **3** | **2** |

*Improved data and incident reporting by operators*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓[1] | | |
| Stuart Vaccaneo (#14) | Individual | | | ✓ |
| AEISG (#27) | Industry group | ✓ | | |
| Anglo American (#24) | Industry group | | | ✓ |
| Anonymous (#13) | Industry group | ✓[2] | | |
| Anonymous (#29) | Industry group | | | ✓ |
| Glencore (#19) | Industry group | ✓[3] | | |
| Kestrel (#18) | Industry group | ✓[2] | | |
| QRC (#16) | Industry group | | | ✓ |
| **Total (9 stakeholders)** | | **5** | **-** | **4** |

Comments

1. The MEU was supportive overall but proposed further amendments primarily focussed on ISHRs having access to more information.
2. Both these stakeholders were supportive overall but did not support the alignment of penalties.
3. Glencore was supportive overall but did not support the notification of cessation of operations. Glencore felt that the current legislation was adequate in relation to oral reporting.

*Information sharing to improve safety*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| Anonymous (#17) | Employee union | ✓ | | |
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | ✓ | | |
| Adam Lines (#08) | Individual | ✓ | | |
| Anonymous (#01) | Individual | ✓# | | |
| Anonymous (#02) | Individual | ✓ | | |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | ✓ | | |
| Anonymous (#31) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | ✓ | | |
| AEISG (#27) | Industry group | ✓ | | |
| AfPA (#06) | Industry group | ✓ | | |
| Anglo American (#24) | Industry group | | | ✓ |
| Anonymous (#13) | Industry group | ✓# | | |
| Anonymous (#21) | Industry group | ✓# | | |
| Anonymous (#28) | Industry group | ✓ | | |
| Anonymous (#29) | Industry group | | ✓ | |
| APPEA (#34) | Industry group | ✓ | | |
| Aurecon (#22) | Industry group | ✓ | | |
| Chinova Resources (#07) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | ✓# | | |
| Kestrel (#18) | Industry group | ✓# | | |
| MESA (#20) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| QRC (#16) | Industry group | ✓# | | |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (26 stakeholders)** | | **24** | **1** | **1** |

Comments

# Whilst these 6 stakeholders supported increased information sharing, they did not wholly support allowing the Minister, CEO and the Chief Inspector to publish information about the number of HPIs and serious incidents, the mine at which these occurred and the operator for the mine.

## *Modern regulatory enforcement*

### *Enforceable undertakings*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| Anonymous (#17) | Employee union | ✓ | | |
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | ✓ | | |
| Adam Lines (#08) | Individual | | | ✓ |
| Anonymous (#01) | Individual | | | ✓ |
| Anonymous (#02) | Individual | ✓ | | |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | ✓ | | |
| Anonymous (#31) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | ✓ | | |
| AEISG (#27) | Industry group | | ✓ | |
| AfPA (#06) | Industry group | ✓ | | |
| Anglo American (#24) | Industry group | ✓ | | |
| Anonymous (#13) | Industry group | ✓ | | |
| Anonymous (#21) | Industry group | ✓ | | |
| Anonymous (#28) | Industry group | ✓ | | |
| Anonymous (#29) | Industry group | ✓ | | |
| APPEA (#34) | Industry group | ✓ | | |
| CCAA (#12) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| MESA (#20) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| QRC (#16) | Industry group | ✓ | | |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (22 stakeholders)** | | **22** | **1** | **2** |

*Courts orders*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| AEISG (#27) | Industry group | ✓ | | |
| Anglo American (#24) | Industry group | | ✓ | |
| Anonymous (#13) | Industry group | ✓ | | |
| Anonymous (#29) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | | | ✓ |
| MMAA (#10) | Industry group | | ✓ | |
| **Total (8 stakeholders)** | | **5** | **2** | **1** |

*Directives*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| AEISG (#27) | Industry group | | ✓ | |
| Anglo American (#24) | Industry group | | | ✓ |
| Anonymous (#13) | Industry group | ✓ | | |
| Anonymous (#29) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | | | ✓ |
| MMAA (#10) | Industry group | ✓ | | |
| NIOA (#26) | Industry group | | | ✓ |
| QRC (#16) | Industry group | | | ✓ |
| **Total (9 stakeholders)** | | **4** | **1** | **4** |

## *Contemporary legislation*

### *Definition of labour hire and employer*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| Anonymous (#13) | Industry group | | | ✓ |
| Anonymous (#29) | Industry group | | ✓ | |
| Glencore (#19) | Industry group | | ✓ | |
| Kestrel (#18) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | | | ✓ |
| QRC (#16) | Industry group | | ✓ | |
| **Total (7 stakeholders)** | | **2** | **3** | **2** |

### *Industrial manslaughter*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| Anonymous (#17) | Employee union | ✓ | | |
| AWU (#23) | Employee union | | | ✓ |
| MEU (#33) | Employee union | ✓ | | |
| Adam Lines (#08) | Individual | | ✓ | |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | | ✓ | |
| Anonymous (#31) | Individual | | | ✓ |
| Professor David Cliff (#05) | Individual | ✓ | | |
| AEISG (#27) | Industry group | ✓ | | |
| AfPA (#06) | Industry group | | ✓ | |
| Anonymous (#13) | Industry group | | ✓ | |
| Anonymous (#21) | Industry group | | | ✓ |
| Anonymous (#28) | Industry group | ✓ | | |
| Anonymous (#29) | Industry group | | | ✓ |
| APPEA (#34) | Industry group | | | ✓ |
| Glencore (#19) | Industry group | | ✓ | |
| Kestrel (#18) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | | ✓ | |
| QRC (#16) | Industry group | | ✓ | |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (20 stakeholders)** | | **8** | **7** | **5** |

*Remote operating centres*

## Proposal to introduce ROCs to the MQSHA

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| Anonymous (#17) | Employee union | | | ✓ |
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | ✓ | | |
| Anonymous (#11) | Individual | ✓ | | |
| Anonymous (#31) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | ✓ | | |
| AfPA (#06) | Industry group | ✓ | | |
| Anglo American (#24) | Industry group | | | ✓ |
| Anonymous (#21) | Industry group | | ✓ | |
| Anonymous (#28) | Industry group | | | ✓ |
| Anonymous (#29) | Industry group | | ✓ | |
| APPEA (#34) | Industry group | | | ✓ |
| Glencore (#19) | Industry group | | | ✓ |
| Kestrel (#18) | Industry group | | | ✓ |
| MMAA (#10) | Industry group | | | ✓ |
| QRC (#16) | Industry group | | | ✓ |
| **Total (16 stakeholders)** | | **6** | **2** | **8** |

Proposal for a requirement in the CMSHA that persons in safety critical roles must be located at a mine site e.g., an SSE, UMM and ventilation officer

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | ✓ | | |
| Adam Lines (#08) | Individual | ✓ | | |
| Anonymous (#02) | Individual | ✓ | | |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | ✓ | | |
| Anonymous (#31) | Individual | | ✓ | |
| Professor David Cliff (#05) | Individual | ✓ | | |
| Anonymous (#21) | Industry group | | ✓ | |
| Anonymous (#28) | Industry group | | ✓ | |
| APPEA (#34) | Industry group | | ✓ | |
| Chinova Resources (#07) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | | | ✓ |
| Kestrel (#18) | Industry group | | | ✓ |
| MMAA (#10) | Industry group | ✓ | | |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (16 stakeholders)** | | **10** | **4** | **2** |

*A contemporary board of examiners*

Proposal for demonstrated expertise or experience in the assessment of competencies for at least one member of the BoE

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | | ✓ | |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | ✓ | | |
| Anonymous (#31) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | ✓ | | |
| Anglo American (#24) | Industry group | ✓ | | |
| Anonymous (#13) | Industry group | ✓ | | |
| Anonymous (#21) | Industry group | ✓ | | |
| Anonymous (#28) | Industry group | ✓ | | |
| APPEA (#34) | Industry group | ✓ | | |
| Aurecon (#22) | Industry group | ✓ | | |
| Chinova Resources (#07) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (17 stakeholders)** | | **16** | **1** | **-** |

Proposal to have an independent chairperson of the BoE

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | | ✓ | |
| Adam Lines (#08) | Individual | ✓ | | |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | ✓ | | |
| Anonymous (#31) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | ✓ | | |
| Anglo American (#24) | Industry group | ✓ | | |
| Anonymous (#13) | Industry group | ✓ | | |
| Anonymous (#21) | Industry group | ✓ | | |
| Anonymous (#28) | Industry group | | ✓ | |
| APPEA (#34) | Industry group | | | ✓ |
| Aurecon (#22) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | | ✓ | |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (17 stakeholders)** | | **13** | **3** | **1** |

## *Consistency of Resources Safety Acts*

### *Court jurisdiction for prosecutions*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| AWU (#23) | Employee union | | | ✓ |
| MEU (#33) | Employee union | ✓ | | |
| Anonymous (#13) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | | ✓ | |
| Kestrel (#18) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | | ✓ | |
| **Total (6 stakeholders)** | | **3** | **2** | **1** |

*Commencement of offence proceedings*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| Anglo American (#24) | Industry group | | ✓ | |
| Anonymous (#13) | Industry group | | | ✓ |
| Glencore (#19) | Industry group | | ✓ | |
| Kestrel (#18) | Industry group | | | ✓ |
| MMAA (#10) | Industry group | | ✓ | |
| **Total (6 stakeholders)** | | **1** | **3** | **2** |

*Maximising reporting of safety incidents – protection from reprisals*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| AEISG (#27) | Industry group | | | ✓ |
| Anonymous (#13) | Industry group | | | ✓ |
| Glencore (#19) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| **Total (6 stakeholders)** | | **4** | **-** | **2** |

*Consistent board of inquiry offence provisions*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| **Total (3 stakeholders)** | | **3** | **-** | **-** |

*Consistent penalties for assault and obstruct offences under the Resources Safety Acts*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| Anonymous (#13) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | | ✓ | |
| QRC (#16) | Industry group | ✓ | | |
| **Total (4 stakeholders)** | | **3** | **1** | **-** |

*Consistency in penalties for failing to provide help to SSHC representatives and committees*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| Anonymous (#13) | Industry group | | | ✓ |
| MMAA (#10) | Industry group | | | ✓ |
| **Total (3 stakeholders)** | | **1** | **-** | **2** |

## *Operational amendments*

*Explosives security clearance*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| AEISG (#27) | Industry group | ✓ | | |
| FDAQ (#15) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| NIOA (#26) | Industry group | | | ✓ |
| SIFA (#30) | Industry group | ✓ | | |
| **Total (6 stakeholders)** | | **5** | **-** | **1** |

*Improved training for mine workers*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | ✓ | | |
| Anonymous (#13) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| **Total (5 stakeholders)** | | **5** | **-** | **-** |

*Gas device approval authorities*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| **Total (1 stakeholders)** | | **1** | **-** | **-** |

*Domestic biogas systems*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| **Total (1 stakeholders)** | | **1** | **-** | **-** |

## *Minor amendments*

### *Notification of diseases*

Proposed streamlining of prescribed disease notification requirements

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | | ✓ | |
| Anonymous (#01) | Individual | | | ✓ |
| Anonymous (#09) | Individual | ✓ | | |
| Anonymous (#11) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | | | ✓ |
| Anonymous (#21) | Industry group | ✓ | | |
| Anonymous (#28) | Industry group | ✓ | | |
| APPEA (#34) | Industry group | ✓ | | |
| Chinova Resources (#07) | Industry group | ✓ | | |
| Glencore (#19) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (14 stakeholders)** | | **11** | **1** | **2** |

Proposal to update the lists of prescribed reportable diseases in the CMSHR and MQSHR and also to make them consistent across the two regulations

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| AWU (#23) | Employee union | ✓ | | |
| MEU (#33) | Employee union | ✓ | | |
| Anonymous (#09) | Individual | | ✓ | |
| Anonymous (#11) | Individual | ✓ | | |
| Professor David Cliff (#05) | Individual | ✓ | | |
| Anonymous (#28) | Industry group | | ✓ | |
| APPEA (#34) | Industry group | | ✓ | |
| Glencore (#19) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| Bulloo Shire Council (#04) | Other | ✓ | | |
| **Total (11 stakeholders)** | | **8** | **3** | **-** |

## *UQ review recommendations*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| MMAA (#10) | Industry group | ✓ | | |
| **Total (2 stakeholders)** | | **2** | **-** | **-** |

## *Other minor amendments (remaining amendments)*

### *Approval of forms by CEO*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| AEISG (#27) | Industry group | ✓ | | |
| Anonymous (#13) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| **Total (4 stakeholders)** | | **4** | **-** | **-** |

### *Activities for meaning of prohibited explosives*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| AEISG (#27) | Industry group | ✓ | | |
| FDAQ (#15) | Industry group | | | ✓ |
| Kestrel (#18) | Industry group | ✓ | | |
| NIOA (#26) | Industry group | | | ✓ |
| SIFA (#30) | Industry group | | | ✓ |
| **Total (6 stakeholders)** | | **3** | **-** | **3** |

### *Direction of explosives inspectors and authorised officers by Minister*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| AEISG (#27) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| **Total (3 stakeholders)** | | **3** | **-** | **-** |

*Requirement to give name and address*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| AEISG (#27) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| **Total (3 stakeholders)** | | **3** | **-** | **-** |

*Notice of explosives import or export*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| AEISG (#27) | Industry group | ✓ | | |
| FDAQ (#15) | Industry group | | ✓ | |
| Kestrel (#18) | Industry group | ✓ | | |
| NIOA (#26) | Industry group | | ✓ | |
| SIFA (#30) | Industry group | | | ✓ |
| **Total (6 stakeholders)** | | **3** | **2** | **1** |

*Disclosure of information*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| AEISG (#27) | Industry group | ✓ | | |
| FDAQ (#15) | Industry group | | | ✓ |
| Kestrel (#18) | Industry group | | | ✓ |
| NIOA (#26) | Industry group | ✓ | | |
| **Total (5 stakeholders)** | | **3** | **-** | **2** |

*RSHQ Act consequential amendments*

| Stakeholder | Stakeholder group | Supports proposal (completely, partially or in principle) | Does not support proposal | Unclear / Alternate proposal provided |
|---|---|---|---|---|
| MEU (#33) | Employee union | ✓ | | |
| AEISG (#27) | Industry group | ✓ | | |
| Anonymous (#13) | Industry group | ✓ | | |
| Kestrel (#18) | Industry group | ✓ | | |
| NIOA (#26) | Industry group | ✓ | | |
| **Total (5 stakeholders)** | | **5** | **-** | **-** |

# Appendix 3 – Questions at a glance

| Key concepts | Questions | |
|---|---|---|
| Introducing critical control management | QUESTION 1: | What impact will the proposed critical control requirements have on clarity, confidence and consistency regarding application of controls in risk management? |
| Competency for key critical safety roles | QUESTION 2: | Do you agree with the Option 1 proposals for the additional certificates of competency? Please explain why, or why not? Are there any other options to address the problem? |
| | QUESTION 3: | Do you think Option 1 will have the expected costs and benefits outlined in the cost benefit analysis? |
| | QUESTION 4: | Are there other parameters or estimates that should be used instead when estimating costs and benefits? |
| | QUESTION 5: | Are there cost and benefits currently not considered in relation to Option 1 that should be? |
| | QUESTION 6: | What transitional period do you think will be reasonable for those currently in the safety critical positions to prepare for examination for certificates of competency, and gain a certificate of competency? Would a three-year transitional period be sufficient to obtain a certificate of competency? |
| | QUESTION 7: | The BoI recommended that an underground coal mine SSE should also hold a first class UMM certificate of competency. Should a surface coal mine SSE be required to be the holder of a surface mine manager certificate of competency so that a consistent approach is adopted? |
| | QUESTION 8: | Should a surface electrical engineering manager also be required to hold an electrical engineering manager certificate of competency? |
| Continuing professional development (CPD) | QUESTION 9: | Do you agree that the integrity of the CPD Scheme would be best supported through the proposed legislative changes? |

| | | |
|---|---|---|
| | QUESTION 10: | Do you envisage any unanticipated costs to you or your organisation with the introduction of a compliance and enforcement framework for the CPD scheme? |
| Establish site safety and health committee | QUESTION 11:<br><br><br>QUESTION 12: | Does the proposed SSHC structure provide an adequate structure that coal industry would support?<br>What is an appropriate transitional period to allow for industry preparedness in adopting the new amendments to the SSHC provisions and why have you nominated this period?<br><br>a. None required<br>b. 6 months<br>c. 12 months |
| Information sharing to improve safety | QUESTION 13: | Do you support greater sharing of safety information and transparency in the resources sector? |
| Enforceable undertakings | QUESTION 14: | What matters do you think should be covered by an enforceable undertaking? |
| Industrial manslaughter | QUESTION 15: | Is it a reasonable view that whoever employs/engages or arranges for a worker, and whose negligent conduct causes the death of the resources sector worker, should be considered (either jointly or individually) liable for industrial manslaughter? |
| Remote operating centres | QUESTION 16:<br><br><br><br><br>QUESTION 17: | Should the MQSHA also be amended to clarify coverage of the MQSHA for off-site supervisors. If so, what if any differences to the ROC proposal should be made for the MQSHA?<br>Should there be a requirement in the CMSHA that persons in safety critical roles must be located at a mine site e.g., an SSE, UMM and ventilation officer? |
| A contemporary board of examiners | QUESTION 18: | Is demonstrated expertise or experience in the assessment of competencies seen as an essential skill set for at least one member of |

| | | |
|---|---|---|
| | | the BoE? Why or why not? |
| | QUESTION 19: | Is it important to have a chairperson of the BoE who is independent of both the Queensland government and the mining industry? Why or why not? |
| Notification of diseases (refer Attachment 4) | QUESTION 20: | Do you see any issues with the proposed streamlining of prescribed disease notification requirements? If so, what are they? |
| | QUESTION 21: | Are there any other circumstances where notification of a prescribed disease occurrence by an SSE may not be needed? If yes, please provide details. |
| | QUESTION 22: | Do you think there are any alternative mechanisms (i.e., not reliant on SSEs notifying of prescribed disease occurrences) that would still ensure the regulator and other stakeholders (including industry safety and health representatives and district workers' representatives) are kept appropriately informed of disease occurrences in the mining industry? If yes, please provide details. |
| | QUESTION 23: | Do you agree with updating the lists of prescribed reportable diseases in the CMSHR and MQSHR and also to make them consistent across the two regulations? Why or why not? |

# Appendix 4 – Cost benefit analysis

*Summary*

A number of amendments are proposed as a preventive and proactive package of safety reforms. All proposals, other than proposals for additional certificates of competency have minor if any cost impacts. Therefore, the cost benefit analysis focuses on the proposed additional certificates of competency.

While the potential benefits of additional certificates of competency are not modelled explicitly due to a lack of data, an illustrative example of quantified benefits are presented to frame the case for action for this proposal, compared to the status quo.

Key findings include:

- The cost associated with the new certificates of competency for existing positions for surface mine managers, surface mechanical engineering managers, surface electrical engineering managers, surface site senior executives, underground site senior executives, underground electrical engineering managers and underground mechanical engineering managers rather than new positions per se, (which will be performed by existing staff with new certifications) is $5.4 million as a present value[45] ($834,000 as an equivalent annual value) across all mining industry in Queensland. Underground coal represents 20 per cent of costs, and surface coal 80 per cent.
- The benefits of the amendments are to improve safety and health in Queensland mines. Due to uncertainty with key variables these have not been incorporated into a net present value calculation. However, an illustrative quantification was carried out to illuminate the potential benefits relative to costs. The figures here are based on the best estimates of expert staff in RSHQ. Given a five-year transition period where only half the benefits are assumed to eventuate, some indicative values are:
  - There would be a fall in injuries due to amendments such as existing positions requiring statutory certificates. If this reduction in injuries was one per cent for the five-year transition period, and two per cent each year after, the benefits would be $786,785 a year for the period after transition.
  - If there was a reduction in fatalities of five per cent, the annual value (not discounted) for the main period after transition would be $612,000 per year.

[45] **Present value** is the total value of the future benefit stream (10 years) in present day terms - this allows costs and benefits to be compared at the point where decisions are made.

- There would be a reduction in the risk of an underground coal mining disaster due to the proposals. This reduction in disaster risk would not only help avoid fatalities that carry high social costs, but also reduce the risk of mine closure and sterilisation (permanent loss) of coal resources as a result of an explosion. There is not sufficient information available on the baseline risk of an underground coal disaster and other key factors in Queensland to model these risks adequately. However, an exploratory quantification was carried out to illustrate the potential benefits. If there is a baseline disaster risk of five per cent per year, and this risk falls by 20 per cent as a result of the proposed changes, the benefits in reduced lost production and coal sterilisation would be $11.2 million a year for the main period after transition.
- Overall, this benefit scenario results in present value of $67.1million or an annual equivalent value of $10.3 million a year. These far outweigh the costs.

*Introduction and assumptions*

This cost benefit analysis is a desktop study based on published data and information from industry sources.

The jurisdiction covered by the analysis is Queensland – i.e., the costs to Queensland are primarily considered. The perspective is for all of Queensland society. The costs are not disaggregated into societal sectors, as the mining industry will bear most of the costs so disaggregation would not add a significant amount of information.

The time frame of the analysis is 10 years, in line with the default time frame suggested by Queensland Regulatory Assessment Statement Guidelines (version 2.1).

In this analysis, the average cost of labour is taken to indicate the value of time. For coal mining this is $78/hour. These figures are based on Australian Bureau of Statistics (ABS) sources (2020 and include estimates for on-costs. However, as the safety roles relate to senior roles within mines, it is likely this average under-estimates the cost of time. A 20 per cent premium was added onto the ABS average to account for this.

Inspector's time was estimated at $87/hour (based on advice from the chief inspector). Secretariat support is indicated by an additional AO4 position.

Where historical information is used, the average for the last three years of available data is used to account for annual variability in figures.

A discount rate of seven per cent is applied to the figures to calculate the present value of costs.

The option is compared to a base case of the status quo. This is the world without the proposed policy interventions. This means that costs are presented as relative to the status quo. The option described requires new actions compared to the status quo, and as such is quantified in its entirety.

The overall net present value is not calculated. This is because the main benefit – a reduction in injuries and disaster risk at underground coal mines – has not been explicitly quantified and included due to lack of data. However, a brief illustrative quantitative example is presented to help clarify the benefits of the options.

### *Costs and benefits*

#### Overview

Option 1 is to progress a comprehensive preventive and proactive package of safety reforms. This package of reforms includes additional certificate of competency requirements. Option 1 is also based on components of HRO theory, with those aspects being a deference to expertise, and a culture of safety. It is crucial that safety critical roles are held by competent persons.

Option 1 will also increase consistency with NSW in relation to certificate of competency requirements in the coal industry.

Only proposed certificate of competency amendments are analysed in the cost benefit analysis, as they are additional to the base case of maintaining current certificate of competency requirements in the Mining Safety Acts.

Additional certificates of competency are expected to cause an increase in costs, as well as benefits.

The alternative option is the status quo or no change to existing requirements.

The following certificates of competency for the following safety critical roles are proposed:

- For underground coal mines
  - An electrical engineering manager must be the holder of an electrical engineering manager certificate of competency (underground coal mines).
  - A mechanical engineering manager must be the holder of a mechanical engineering manager certificate of competency (underground coal mines).
  - An SSE must have a first class UMM certificate of competency.
- For surface coal mines
  - A surface mine manager must be the holder of a surface mine manager certificate of competency.

- A mechanical engineering manager must be the holder of a mechanical engineering manager certificate of competency (surface coal mines).
- An electrical engineering manager must be the holder of an electrical engineering manager certificate of competency (surface coal mines)
- A surface SSE must have a surface mine manager certificate of competency.

### Safety benefits

The main benefit of the proposed additional certificates of competency is to increase safety and health in the mining industry and reduce accidents.

Those entrusted to fulfil statutory roles are at the frontline of safety and health at a mine and are accountable for providing oversight of the management of mining hazards, risks and required controls. They are there because they are required to have higher competency levels than other workers whom they safeguard.

It is a significant concern that some mines have been appointing workers who are not competent to fulfil safety critical roles. The proposed BoE certification measures are expected to decrease the risk of less competent officers holding important critical safety positions within mines. A related benefit is to increase the status and calibre of those safety critical positions within mines. This benefit was identified by Professor James Reason through his internationally renowned occupational health and safety research.

NSW has the additional coal industry certificates of competency being proposed. The coal industry fatality rate in NSW from 2009-10 to 2019-20 has been lower than in Queensland[46], although it is not possible to directly attribute this to additional certificates of competency.

There are potentially significant social and economic benefits from the proposals. In particular:

- The reduction in risk of fatalities would have benefits for mine owners, mine workers and mining communities. In particular:
  - There would be fewer potential fatalities. There have sadly been 55 deaths in Queensland mines between 2000 and the present (April 2023).
  - The national Office of Best Practice Regulation (2021) has suggested that the value of an avoided death is $5.1 million ). In addition to this monetary value, as a consequence of a fatality there are unquantifiable negative social and psychological impacts on the families, friends and communities impacted by a mining disaster.

[46] Queensland had 14 fatalities in the coal industry, and 10 in metalliferous mines and quarries between 2009-10 and 2019-20. NSW had seven fatalities in the coal industry and 10 in metalliferous mines and quarries between 2009-10 and 2019-20.

- Safer work practices are likely to result in a fall in injuries. Safe Work Australia (2012) weighted the standard Office of Best Practice Regulation's value of an injury-free year by the most common injuries in mining. This revealed a value of $108,800 per injury free year (updated to 2020 $). The baseline number of injuries was based on the average annual number of lost time injuries from 2017 to 2020.
- Reduced risk of loss of income from lost production and/or sterilisation of mineral resources as a result of a mining disaster, including:
  - A mine would stand to lose significant income from the temporary closure of a mine as an investigation occurred – this can be a lengthy process.
  - In addition to the temporary closure, in the most serious scenarios, it is likely there would be some sterilisation (permanent loss) of coal resources due to conditions being too dangerous around the impacted seam, or due to sensitivity over disturbing a grave site. Thirty million tonnes of coal were sterilised after the 1994 Moura disaster (internal DNRME figures). Since Moura, events at the Grosvenor Mine on 6th May resulted in further sterilisation of coal, and events at Cook Colliery and North Goonyella resulted in significant sterilisation of coal. It is not clear how much could be expected from a future Queensland underground coal mining disaster.

### Statutory position holders and competency requirements

There is a proposal to turn existing critical safety roles into statutory positions at mines with position holders requiring competency certificates. This is likely to increase the pool of competent staff across Australia and increase certainty in the capability of mine workers regardless of where they were certified. This will also increase the status and credibility of the role of statutory position holders, which could increase the safety culture in mines (Reason, 1997).

The number of candidates for statutory positions expected in the five transitional years is 1550 or 310 per year. These will not all be new full-time employees – rather they are requirements that may be met by existing staff when appropriately trained. The distribution over the different industries is shown in Tables 11 and 12 (below).

The proposed additional certificates of competency require both a written and oral exam.

*Table 11 – Number of statutory positions (Coal underground[47])*

| Role | Number of mines | Number per mine | Total statutory positions | Assessment (assumed for purposes of this study) |
|---|---|---|---|---|
| Electrical engineering manager | 14 | 2 | 28 | BoE written and oral exams |
| Mechanical engineering manager | 14 | 2 | 28 | BoE written and oral exams |
| *First class mine manager* | *14* | *1* | *14* | *BoE written and oral exams* |

*Table 12 – Number of statutory positions (Coal surface[48] )*

| Role | Number of mines | Number per mine | Total statutory positions | Assessment (assumed for purposes of this study) |
|---|---|---|---|---|
| Mechanical engineering manager | 48 | 2 | 96 | BoE written and oral exams |
| Surface mine manager | 48 | 2 | 96 | BoE written and oral exams |
| Electrical engineering manager | 48 | 1 | 48 | BoE written and oral exams |
| SSE surface mine manager | 48 | 1 | 48 | BoE written and oral exams |

Note: it is envisaged that most positions will not require new employees, but rather will be met by existing employees with new certification requirements. There may also be some employees who already have these qualifications (as outlined in Tables 13 and 14 below), which means that these position estimates are upper bound estimates. Tables 13 and 14 (below) show current and proposed certificate of competency requirements for statutory positions in underground and surface mines respectively.

[47] Certificates/notice already issued for UMM, deputy; SSE already required to pass legislation exam so there will be no additional requirements for these positions.

[48] Certificate/notice already issued for open cut examiner; SSE already required to pass legislation exam so there will be no additional requirements for these positions.

*Table 13 – Current and proposed certificate of competency requirements for statutory positions (coal underground)*

| Position / function | Currently exists at Qld mines | Currently referred to in legislation | Current certificate requirement | Proposed certificate requirement |
|---|---|---|---|---|
| Site senior executive | Yes | Yes | No[49] | First class mine manager certificate of competency (underground coal mines)[50] |
| Underground mine manager | Yes | Yes | Yes[51] | No change |
| ERZ controller | Yes | Yes | Yes[52] | No change |
| Electrical engineering manager | Yes | Yes[53] | No | Electrical engineering manager certificate of competency (underground coal mines)[54] |
| Mechanical engineering manager | Yes | Yes[55] | No | Mechanical engineering manager certificate of competency (underground coal mines)[56] |
| Ventilation Officer | Yes | Yes | Yes[57] | No change |
| Industry safety and health representative | Yes | Yes | Yes[58] | No change |

[49] Required to hold an SSE notice (issued by the BoE) which requires passing a legislation exam administered by the BoE.
[50] This certificate of competency already exists in Qld.
[51] First class mine manager's certificate of competency.
[52] Deputy's first class mine manager's or second class mine manager's certificate of competency.
[53] Position not specifically named, but function identified in legislation – refer CMSHA, s.60(10) and CMSHR, sch 7, item 3(a).
[54] This is a new certificate of competency for Qld. A person holding an equivalent interstate certificate of competency would be able to apply to have their interstate certificate recognised by mutual recognition.
[55] Position not specifically named, but function identified in legislation – refer CMSHA, s.60(10) and CMSHR, sch 7, item 3(b).
[56] This is a new certificate of competency for Qld. A person holding an equivalent interstate certificate of competency would be able to apply to have their interstate certificate recognised by mutual recognition.
[57] Ventilation officer's certificate of competency required from 11 November 2019 - note the current three-year transitional period ends on 11 November 2022.
[58] Deputy's, first class mine manager's or second class mine manager's certificate of competency.

*Table 14 – Current and proposed certificate of competency requirements for statutory positions (coal surface)*

| Position / function | Currently exists at Qld mines | Currently referred to in legislation | Current certificate requirement | Proposed certificate requirement |
|---|---|---|---|---|
| Site senior executive | Yes | Yes | No[59] | Surface mine manager certificate of competency |
| Surface mine manager | Yes | No | No | Surface mine manager certificate of competency[60] |
| Electrical engineering manager | Yes | Yes[61] | No | Electrical engineering manager certificate of competency (surface coal mines) |
| Mechanical engineering manager | Yes | Yes[62] | No | Mechanical engineering manager certificate of competency (surface coal mines)[63] |
| Open-cut examiner | Yes | Yes | Yes[64] | No change |
| Industry safety and health representative | Yes | Yes | Yes[65] | No change |

### Costs

The proposal to increase the number of statutory position holders has implications for the costs, as this means that certificates of competency will be required. As noted above, it is not assumed that most of the new roles will be filled by dedicated new full-time staff, but rather

59 Required to hold an SSE notice (issued by the BoE) which requires passing a legislation exam administered by the BoE.

60 This is a new certificate of competency for Qld. A person holding an equivalent interstate certificate of competency would be able to apply to have their interstate certificate recognised by mutual recognition.

61 Position not specifically named, but function identified in legislation – refer CMSHR, sch 7, item 3(a).
Note - CMSHR, schedule 7, item 3(a) is not limited to underground and 'Surface Electrical Engineering Manager' is mentioned current Competencies recognised by the CMSHAC.

62 Position not specifically named, but function identified in legislation – refer CMSHR, sch 7, item 3(b).
Note - CMSHR, sch 7, item 3(b) not limited to underground, but function not mention in relation to surface mine in current Competencies recognised by the CMSHAC.

63 This is a new certificate of competency for Qld. A person holding an equivalent interstate certificate of competency would be able to apply to have their interstate certificate recognised by mutual recognition.

64 Open cut examiner's certificate of competency.

65 Deputy's, first class mine manager's or second class mine manager's certificate of competency.

that most existing staff will have responsibilities that require certification. The cost of this certification is discussed here.

### Certification cost increase

The number of positions requiring certificates is outlined in Tables 11 and 12 above. It is assumed the cost of meeting the statutory positions will start immediately, and then will be spread over five years due to transition arrangements. When calculating the overall cost for the 10-year period, there is allowance made for 10 per cent turnover p.a. after this initial period (i.e., for the last five years).

There is a cost associated with the new position holders gaining their certification, made up of the time required for study and then actually sitting the exam.

There is a requirement to do BoE managed written and oral exams (see Table 15 below). Sitting the written test is assumed to take three hours, and the oral test two and a half hours. Travel time to each test is assumed to take two hours as well. Workers spend approximately one week in exam preparation for each exam. The total time taken for the exams is 45 hours for written BoE exams, and 44.5 for oral BoE exams. In total, the time taken for the positions that require both a written and oral exam is 89.5 hours.

For the SSE first class UMM certificates, the cost is higher. As outlined in Table 16 (below), sitting the written test is assumed to take three hours, and the oral test five hours. Travel time to each test is assumed to take two hours as well. Workers spend approximately four weeks in exam preparation for each exam. The total time taken for the exams is 165 hours for written BoE exams, and 167 for oral BoE exams.

There is a 15 per cent (most positions) to 30 per cent (UMM) failure rate for the exams that has also been taken into account.

In total certification costs applicants have are approximately an average of $941,981 per year for the five years the positions are introduced.

In addition to these direct costs, there may be increased competition for scarce staff if it is necessary to have more people with certification. This could lead to an increase in recruiting costs (e.g., more effort needed to find people such as more ads) or increased salary costs or delays to projects if staff cannot be found. However, transitional arrangements will be negotiated with industry to minimise the impacts and as such these costs are expected to be minimal and are not quantified.

*Table 15 – Summary of assumptions for statutory positions – BoE exams*

| Variable | Assumption/calculation |
|---|---|
| *Number of statutory position holders* | *As per Tables 11 and 12* |
| *Preparation time for written and oral test* | *1 week per applicant for each type of exam (2 weeks if doing both written and oral)* |
| *Travel time to tests* | *2 hours* |
| *Test time* | *3 hours written, 2.5 hours oral* |
| *Total time* | *45 hours for written BoE exams, and 44.5 for oral BoE exams* |
| *Percentage re-sitting oral exam* | *15%* |
| *Hourly wage per hour (based on ABS data plus a 20% premium)* | *$93.60* |

*Table 16 – Summary of assumptions for statutory positions – BoE exam – Underground first class mine manager*[66]

| Variable | Assumption/calculation |
|---|---|
| *Number of statutory position holders* | *As per Tables 11 and 12* |
| *Preparation time for written and oral test* | *4 week per applicant for each type of exam (8 weeks if doing both written and oral)* |
| *Travel time to tests* | *2 hours* |
| *Test time* | *3 hours written; 5 hours oral* |
| *Total time* | *165 hours for written BoE exams, and 167 for oral BoE exams* |
| *Percentage re-sitting oral exam* | *30%* |
| *Hourly wage per hour (based on ABS data plus a 20% premium)* | *$93.60* |

### *Workload increase for RSHQ and the BoE*

Associated with the existing critical safety roles becoming statutory positions for coal mines is an increase in the workload for the BoE. This Board is currently made up of eleven members consisting of four inspectors and seven industry and union representatives. The inspectors write the exam. All members of the Board are responsible for marking written exams. Over the last three years, there was an average of 50 certificates issued each year (BoE annual report).

Inspectors are responsible for developing and testing exam papers. At present, this takes one month of work for an inspector for the written exams. Assuming a 38-hour work week, and the average number of certificates issued in the last three years (65 certificates), this is

[66] These assumptions have also been used for the SSE surface mine manager certificate of competency.

approximately 2.4 hours of work per certificate issued. Refer to Table 17 (below) for a summary of the BoE workload assumptions discussed below.

Marking written exams takes 1.5 hours per exam for any member for the BoE.

For the full BoE oral exam, inspectors spend approximately four weeks to prepare, assess and mark exams for 10 applicants. This is 15.2 hours per applicant.

The cost for the industry representatives consists of the time they spend marking written exams (1.5 hours per exam) and assessing oral exams (2.5 hours per exam plus one hour discussing candidate).

The number of applicants needing to re-sit their exams is based on the outcomes of the BoE exams for the last three years.

These are conservative estimates as they do not incorporate any travel time for panel members.

In addition to this estimate of the cost of the time involved, it should be borne in mind that greater effort will have to be made to find people who have the time and are willing to sit on the oral examination panel. The Board is already struggling to find enough volunteers to sit on the panels and mark exams in a timely manner. The administration of the process will need to take action to negate possible delays to the process of certification.

Room cost hire may increase as the capacity of regional rooms that are currently provided for free is strained. However, this cost is likely to be relatively small and is not assessed here.

The BoE secretariat itself will face some increased costs of processing the new statutory certificates. Here it is assumed that it takes two hours per certificate.

The total cost to the industry and RSHQ of preparing and marking all of these types of exams is approximately $213,835 per year for the five years of introduction.

*Table 17 – Summary of assumptions for BoE workload coal mine exams*

| Variable | Assumption/calculation |
|---|---|
| Number of certificates issued | As per Tables 11 and 12 |
| Number of BoE members – written exam | 4 inspectors plus 7 industry/union representatives |
| Number of panel members – oral exam | 1 inspector plus 2 industry/union representatives |

| | |
|---|---|
| Cost to inspectorate – preparing written exam | 2.5 hours per exam (one month per written exam prepared, assuming only one per year here) |
| Cost to inspectorate marking written exam | 1.5 hours per exam (one examiner per exam) |
| Cost to inspectorate – oral exam | 15.2 hours per exam |
| Cost to industry – written exam | 1.5 hours per exam |
| Cost to industry – oral exam | 3.5 hours per exam |

The workload of the secretariat, the BoE members and the oral panels will undoubtedly increase. It will be necessary to consider the adoption of innovative examination and testing technology which is in use in many Australian universities and training organisations. Alternatively internal reallocation of resources may be required to ensure that the priority of examination and certification applicants.

Fees that help support the secretariat are not considered in this analysis, as they represent a transfer of funds from one party to another, and thus do not change the overall outcome of the analysis.

It is possible there could be some impacts on competitiveness, employment and workforce mobility and career progression. There might also be impacts on costs associated with backfilling roles or acting arrangements while staff are at training or on leave. This would include persons appointed to act as an SSE for an underground coal mine during an SSE's absence of more than 14 days and a person left in charge of an underground coal mine in the absence of an UMM.[67] This impact will be mitigated by the presence of employees who hold the certificates already, which increases the size of the available labour pool. However, given that only a handful of mining jobs (358 positions out of 72,600 total (ABS 2022)) are impacted it is likely these impacts will be small.

*Overall cost*

The Present Value (PV) of costs is presented in Table 18. These represent the future value of costs over the 10-year policy period in today's value with a seven percent discount rate. The total PV cost is $5.4 million.

[67] Refer 'Competency for key critical safety roles' topic for further information regarding proposed changes about qualifications of persons in key safety roles during absences.

*Table 18 – Present value of costs*[68]

| Value | Costs |
|---|---|
| *Present value of costs* | *$5,432,349* |
| *Equivalent annual value* | *$833,792* |

### Illustrative quantification of safety benefits

For this study it has not been possible to robustly quantify these safety benefits offered by the proposals. This is due to uncertainty over quantifying:

- The risk of fatalities, and an underground coal disaster if no intervention occurs (i.e., the baseline risk of an underground coal mining disaster).
- The likely reduction in baseline risk of disaster as a result of the proposals.
- The likely reduction in risk of injury from the proposed Queensland policies. Aggregated data on the causes of current injuries is not available, and so it is difficult to quantify the likely impact of proposed changes to future injury rates in Queensland. This challenge to quantify robustly echoes the findings of Access Economics (2011) who also noted that lack of data on reasons for current injuries as well as challenges of modelling changes due to new regulations.

However, some illustrative figures are presented here to help complement the costing analysis and put the costs into context. These are all based on expert opinion from the RSHQ.

We have modelled three scenarios around benefits, a low, medium and high benefits scenario with varying levels of baseline risk and effectiveness of the proposals in reducing the risk. The medium scenario has similar assumptions as those modelled in the 2013 RIS for a package of measures including additional certificates of competency and explosion barriers. Although more safety standards (including explosion barriers and a ventilation officer's certificate of competency) have been implemented since that RIS, in the view of the RSHQ there has also been an increase in risk due to deeper, gassier underground coal mines with higher production levels. Surface mines are also facing more hazardous conditions with the depth of cover increasing, highwalls becoming steeper and higher, mine strike distances becoming longer, all of which is increasing the risk of instability and unplanned events, evidenced by the numerous incidents that have resulted in fatalities and HPIs in the surface mines.

[68] Discount rate seven per cent over 10 years.

We have included no benefits for year one, and then only half the benefits for the five-year transition period.

The figures here and in the summary are for the medium benefits scenario. It is the expert opinion of RSHQ that this is a conservative scenario as they expect that baseline risk is likely to be higher and the effectiveness of the proposals greater than in this scenario. The other scenarios are outlined in the sensitivity analysis.

Using the Safe Work Australia figure for the value of injuries, and following their assumption of a two per cent growth in injuries per year in mining in the status quo baseline due to increased employment:

- If there is a two per cent fall in injuries each year over the five years that all new regulations are in place (and a one per cent fall each year in the first five years due to the transitional period), this is a value of **$787,000** a year for the period after transition.

There is little concrete evidence for the baseline risk of coal mining disasters in Queensland, or the potential impact of a disaster (especially about the permanent loss of coal resources that might occur). However, if:

- There is a five per cent baseline risk of disaster in underground coal mines (i.e., each year there is a five per cent risk that there will be an underground coal mining disaster).
- The reforms reduce the risk of an underground coal mining disaster by 20 per cent in each year.

Then the associated benefits could be:

- **$612,000** per year in reduced fatalities.
- **$8.3 million** per year in reduced risk of loss in production for one year as the mine is shut for investigation. Here an average forecast coal price of $147/tonne is used (REQ 2021) weighted by the average proportion of thermal and metallurgical coal produced by Queensland in the last three years. The net economic loss resulting from this loss of production is estimated at 70 per cent of the value of coal mining lost. This is based on data from national input-output tables (ABS 2009).
- **$2.9 million per year** in reducing the risk of a permanent loss in coal (sterilisation) of 2 million tonnes (based on an average coal mine that has two-thirds of its resources remaining and loses one per cent to sterilisation). This is likely to be a conservative estimate as there is potential for far greater loss of coal resources after a disaster. Approximately, 33 million tonnes of coal was excluded from production at Moura after the 1994 disaster (DNRME internal sources).

The present value of these disaster risk reduction benefits is $67.1 million, or annual equivalent value of $10.3 million a year.

If used in a net present value calculation with the costs documented in the rest of this analysis, the benefits would outweigh the costs by a NPV of $61.7 million (EAV $9.5 million).

The low benefits scenario (with 0.5-1 per cent reduction in injuries and a 2.5 per cent reduction in fatalities) had a present value for the benefits of $11.2 million (EAV $1.7 million). The high benefits scenario (2-4 per cent reduction in injuries and ten per cent reduction in fatalities) had a present value of $126.3 million (EAV $19 million).

The majority of these benefits fall directly to the mines themselves. It is not clear why they would not act to avert these costs. It is possible the costs are either not perceived accurately, or that they are very low per mine when spread over all the mines in Queensland (48 surface mines and 14 underground).

*Distributional impacts*

A detailed distributional analysis was not undertaken for this report as there was not expected to be a wide distribution of costs and benefits between different sectors. For this reason, transfer values (which are payments that essentially shift the same resources from one sector to another) such as royalties have not been included.

In general, the costs will be borne by the coal mining sector. The new statutory positions are around three quarters of the costs. In addition to these direct costs of the policy options there is an industry levy that funds the Mines Inspectorate. As a result, there are limited costs to government or the wider community.

The majority benefits of the policy options are likely to be felt by mining companies, with almost 90 per cent of the benefits in the illustrative quantification relating to reduced risk to production and sterilisation. Mining employees and contractors would benefit from the reduced injuries and deaths. A report estimated that workers and their families bear almost three-quarters of the cost of injuries (PC 2012). Mining communities will also benefit from the reduction in injuries and risk of mining disaster.

*Sensitivity analysis*

A sensitivity analysis on the discount rate was undertaken at three per cent and 10 per cent (refer Tables 19 and 20).

*Table 19 – Present value of costs at a three per cent discount rate*

| Value | Costs |
|---|---|
| Present value of costs | $5,922,399 |
| Equivalent annual value | $760,637 |

*Table 20 – Present value of costs at a 10 per cent discount rate*

| Value | Costs |
|---|---|
| Present value of costs | $5,118,855 |
| Equivalent annual value | $888,841 |

These costs are not very different to those under the seven per cent discount rate in Table 18 (above), which suggests this is not a key variable of concern.

There are no cost estimates that stand out as lending themselves to sensitivity analysis. All costs are reasonably low.

The scenario created to illustrate potential benefits was based on expert opinion from the RSHQ. As such these assumptions were sensitivity tested to demonstrate the potential range of benefits that might occur from the proposed reforms. The medium scenario presented earlier was conservative in their opinion. However, a package of even more conservative assumption were pulled together for a “low benefits” scenario, and more optimistic assumptions for a “high benefits” scenario.

The low benefits scenario assumes:

- A baseline risk of disaster 2.5 per cent, and a five per cent reduction in this risk
- Reduction in injuries of 0.5 per cent a year for the five transition years, then one per cent a year
- A 2.5 per cent reduction in the number of fatalities a year

The PV benefits for the low benefits scenario are $11.2 million which is an annual equivalent value of $1.7 million.

The high benefits scenario assumes:

- A baseline risk of disaster of 7.5 per cent, and a 25 per cent reduction in this risk
- Reduction in injuries of two per cent for the three transition years and then four per cent a year
- A 10 per cent reduction in fatalities in a year.

The PV benefits are $126.3 million which is an annual equivalent value of $19.4 million.

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# Appendix 5 – Further information on Option 3 (non-regulatory)

Rather than amending the resources safety legislation proposed in Option 1, Option 3 would see RSHQ undertake a broad educational program designed to assist the resources sector to adopt principles and practices of HROs. It is envisaged that this educational program would run for five years in total, an intensive two-year educational phase followed by three years of support activities, assisting the transition of the resources industry into business as usual.

The first two years would include focusing on the need for industry to implement critical controls, to identify precursors to fatalities and to use these to prevent accidents and fatalities. This program would also seek to focus industry attention on ensuring workers are appropriately trained and supervised for the tasks they undertake, and that contract labour is safely managed. This would need to be supported by the regulator wherever possible within existing legislative powers, including obtaining, analysing and proactively sharing safety learnings from incidents and fatalities.

The program would be solely focused on the resources industries as they will be most affected by the proposed improvements to processes. Existing communication channels would also be used to ensure that the messages are distributed to the widest audience possible.

The comprehensive two-year educational program would follow the initiatives already undertaken by the Mines Inspectorate in 2020-21 that engaged, communicated with and monitored these industries with the goal of improving reporting of HPIs, quality of investigations undertaken and the effectiveness of industry controls. Data analysis on trending, industry insights and regulation effectiveness measures would continue to be undertaken and disseminated within the industry by the newly formed Central Assessment and Performance unit who can provide key insights into these important safety and health variables.

Whilst comprehensive, it would be the intention to deliver the educational program within RSHQ's operating budget, funded from industry-sourced fees. However, if a more urgent matter arose, such as another serious incident in a mine, resources to deliver this educational package may be stretched.

Whilst more attractive than Option 2, which would provide no safety and health improvements, this option is not seen as a viable as the measures are not sufficient to achieve the objective to support the Queensland resources industry to protect workers through implementing approaches consistent with HRO theory in order to reduce the rates of serious accidents and fatalities. It also does not implement the findings of the BoI which the Government has committed to implementing.

Participation in the safety and health reforms as outlined would be on a voluntary basis only as there would be no legislative imperative. The positive impacts of the reforms could then be severely reduced depending upon the uptake by industry.

# Appendix 6 – Mutual recognition of interstate certificates

Table 21 shows examples of interstate certificates of competency that are potentially equivalent to the proposed new Queensland certificate of competency requirements for underground SSEs, underground electrical engineering managers, underground and surface mechanical engineering managers and surface mine managers.[69] A person holding an equivalent interstate certificate of competency would be able to apply to have their interstate certificate recognised by mutual recognition.

*Table 21 – Examples of potentially equivalent interstate certificates of competency under mutual recognition*

| Position / function | Proposed new Qld certificate of competency requirements | Potentially equivalent interstate certificates (NSW) |
|---|---|---|
| Site senior executive (underground coal) | First class mine manager certificate of competency (underground coal mines)[70] | Mining engineering manager of underground coal mines |
| Electrical engineering manager (underground coal) | Electrical engineering manager certificate of competency (underground coal mines) | Electrical engineering manager of underground coal mines |
| Mechanical engineering manager (underground coal) | Mechanical engineering manager certificate of competency (underground coal mines) | Mechanical engineering manager of underground coal mines |
| Surface mine manager (surface coal) | Surface mine manager certificate of competency | Mining engineering manager of coal mines other than underground mines |
| Mechanical engineering manager (surface coal) | Mechanical engineering manager certificate of competency (surface coal mines) | Mechanical engineer of coal mines other than underground mines |

[69] Refer 'Competency for key critical safety roles' section and Appendix 4 for further information.
[70] Note - this certificate of competency already exists in Qld.

# Appendix 7 – Proposed structure of SSHC

| Details | Proposal |
|---|---|
| Name of committee | Site safety and health committee (SSHC). |
| Who calls the committee | As per the BoI Recommendation 27 and consistently with the MQSHA, the SSHC will be established upon the request of the SSHR or when directed by the chief inspector. |
| Membership | The committee will be comprised of at least two members being:<br><br>a. an SSHR for the mine or part; and<br>b. the SSE for the mine or part or the SSEs representative.<br><br>The SSHC may include other members (nominated members) nominated by the SSE and the workers.<br><br>A SSHC member must be a worker in the mine or part.<br><br>At least half the nominated members must be workers nominated by workers and must work in the area of the mine covered by the SSHC.<br><br>Maximum penalty: 100 penalty units is the current value under MQSHA; it is proposed to maintain this value under the proposal. |
| Functions | a. to facilitate consultation and cooperation between management and workers in initiating, developing and implementing management of risk from operations;<br>b. to encourage an active interest in safety and health matters at the mine;<br>c. to review the circumstances of injuries, illness and HPIs, and recommend appropriate action;<br>d. to consider any proposed changes to operations that may reasonably be expected to affect the control of risk, and make appropriate recommendations;<br>e. to carry out inspections;<br>f. to consider matters referred to the committee by a safety and health representative;<br>g. to help in the resolution of safety and health issues;<br>h. to perform other functions to promote safety and health. |
| Conduct of meetings | Times of meetings of a SSHC are to be held at the times it decides but must be held at least once every three months.<br><br>A SSHC must keep minutes of its meetings but may otherwise conduct its proceedings in the way it decides.<br><br>The SSE must make the minutes of a meeting of a SSHC available at all |

| | |
|---|---|
| | reasonable times for inspection by workers at the mine and by an inspector.<br><br>Maximum penalty for not making the minutes available: 40 penalty units is the current value under MQSHA; it is proposed to maintain this value under the proposal. |
| Enabling committee | The MQSHA and the WHSA contain provisions that enable the committee to carry out its functions, such as providing for time and for facilities. This is primarily through section 104 of the MQSHA. It is proposed to adopt the MQSHA approach, as described below, except to the extent of its penalties.<br><br>It is considered that the penalty provisions under the MQSHA are not adequate, and they should be amended to align with the same level of penalty under section 79 of the WHSA, which provides for the establishment of the SSHC as part of the duties of the person conducting business or undertaking (100 penalty units) and section 98 of the MQSHA, which establishes the committee (100 penalty units).<br><br>The SSE must:<br><br>a. provide appropriate training during working time to persons selected or elected to be site safety and health representatives (SSHRs) within three months of selection or election; and<br>b. provide to SSHCs access to appropriate facilities necessary to perform their functions; and<br>c. ensure that SSHRs and committee members receive their normal pay for time spent:<br>i. in performing their functions; or<br>ii. undergoing training for a safety and health competency established by the committee for a SSHR.<br><br>Maximum penalty: proposed 100 penalty units (current value in the MQSHA is 40 penalty units).<br><br>The legislation allows for the establishment of the committee, for it to have a lesser imposition for facilitating the functions of the committee would defeat the intention of having the committee. In other words, if the legislation is going to impose a penalty for not establishing the committee, the same penalty should apply for not facilitating the committee once established. This level of penalty would also be consistent with the WHSA, which is 100 penalty units. |
| Function of SSHR | Under the MQSHA, one of the functions of the SSHR is to be able to refer safety and health matters to the SSHC, it is proposed to carry this function over to the proposed SSHC under CMSHA. |

# Attachment 1 – Brady Review recommendations

**Recommendation 1:** The industry should recognise that it has a fatality cycle. Unless it makes significant changes to how it operates, the rate of fatalities is likely to continue at current levels. This pattern has been evident over the past 19½ years and is characterised by periods where a significant number of fatalities occur, followed by periods where there are few to none. This suggests that the industry goes through periods of increasing and decreasing vigilance. Past behaviour suggests that in the order of 12 fatalities are likely to occur over any 5-year period.

**Recommendation 2:** The industry should recognise that the causes of fatalities are typically a combination of banal, everyday, straightforward factors, such as a failure of controls, a lack of training, and/or absent or inadequate supervision. Internal incident investigations in mining companies must strive to capture these combinations of causal factors, and avoid simplifying them to a single cause, such as human error, bad luck or freak accidents, which has the potential to mask the underlying system failures. Recommendations 3 to 5 cover the key causal factors identified in this review.

**Recommendation 3:** The industry needs to focus on ensuring workers are appropriately trained for the specific tasks they are undertaking.

**Recommendation 4:** The industry needs to focus on ensuring workers are appropriately supervised for the tasks they are undertaking.

**Recommendation 5:** The industry needs to focus on ensuring the effectiveness and enforcement of controls to manage hazards. Given the increasing Serious Accident Frequency Rate, industry should implement more effective controls (such as elimination, substitution, isolation, or engineering controls). A significant number of the controls reported put in place in the aftermath of an incident were administrative in nature.

**Recommendation 6:** The industry should adopt the principles of High Reliability Organisation theory in order to reduce the rate of Serious Accidents and fatalities. At its most fundamental level, High Reliability Organisation theory focuses on identifying the incidents that are the precursors to larger failures and uses this information to prevent these failures occurring. Adopting a High Reliability Organisation approach will require the refinement or addition of specific competencies to both the mining industry and the regulator.

**Recommendation 7**: In order to proactively assist the mining industry to operate more like High Reliability Organisations, the regulator should play a key role in collating, analysing, identifying,

and proactively disseminating the lessons learned from the incident and fatality data it collects from the industry.

**Recommendation 8:** The regulator should develop a new and greatly simplified incident reporting system that is easy to use by those in the field, that is unambiguous, and that aims to encourage open reporting, rather than be an administrative burden to reporting.

**Recommendation 9:** The industry should shift its focus from LTIs and the LTIFR as a safety indicator.

**Recommendation 10:** The regulator should adopt the Serious Accident Frequency Rate as a measure of safety in the industry.

**Recommendation 11:** The regulator should adopt the High Potential Incident Frequency Rate as a measure of reporting culture in the industry.

# Attachment 2 – Summary of previous certificates of competency stakeholder concerns

Previously in 2013, the Queensland Mine Safety Framework Consultation Regulatory Impact Statement (the 2013 CRIS) contained a proposal for 16 existing safety critical statutory positions to be required to have a certificate of competency. In addition, there were other important safety roles which were proposed to have minimum competencies prescribed but not require a BoE certificate of competency. As a result, the certificate of competency requirement for ventilation officers was progressed.

These proposals were to ensure that people with sufficient experience, expertise and understanding of statutory obligations worked in the complex and hazardous mining processes. Ensuring persons in statutory positions had the appropriate competencies and understand the critical mining principles and procedures was to assist in ensuring safety and health standards were upheld as well as achieving improved productivity at mines. Competency of those in existing safety critical positions was already required by the legislation. Requiring additional certificates of competency was essentially related to additional training and certification requirements which is a form of auditing and greater assurance of competency.

It was also to enable the Mines Inspectorate to more comprehensively audit and respond to concerns about competency and registered training organisations. It was to facilitate a more proactive approach to take action at the earliest possible stage – the training level; and assist industry to ensure competency rather than the Inspectorate continually issuing directives, while a mine continues to be exposed to risks if competent persons are not in safety critical positions. In extreme cases a mine may be required to suspend production. It was to provide greater assurance to the regulator and to operators and SSEs who were directly responsible for ensuring appointees have appropriate competencies. It was also to improve labour mobility and to increase competency requirements across major mining states.

In consultation through the 2013 CRIS, while there was some union and worker support for the proposals, some of industry raised the following concerns about the [then] certificates of competency proposal:

- Insufficient evidence to justify as it relies on subjective concerns of the Inspectorate.
- The additional cost is not justified.
- There were no equivalent requirements in other high risk industries for certificates of competency.
- Capability of the BoE to handle the increased number of certificates of competency.

Evidence to support the 2013 proposed certificates of competency included:

- Compliance action over the previous 10 years (directives, substandard condition or practice notices and mine record entries). The large number of compliance actions indicated that while individual instances of deficient competency may have been addressed on a case-by-case basis, the underlying system deficiencies were not. Lifting the standards of competency was to tackle the underlying systemic failures and ensure continuity of competency was achieved proactively for all activities, not just on an individual case by case basis and only at a point in time.
- A large failure rate for applications for certificates of competency, which had already been endorsed by SSEs as attesting to the individual's readiness.
- Reviews into previous mining disasters in Australia have made repeated findings relating to knowledge, training and competency e.g., Moura No 2 (1984) and Moura No 4 (1986).

Industry submissions did not address the practical impacts and costs of implementation. The proposals for additional certificates of competency did not seek to create additional positions at mines as all of these positions existed. The proposals merely sought to require occupants of these positions to have an independent check by the BoE of the competency requirements already established by the CMSHAC and MSHAC. Industry people outnumbered the government people on the BoE and therefore industry would make the decisions about the competency of people for industry.

In terms of industry raising additional training costs - these training costs already existed if mines were training people to meet the current legislative requirement that people in these roles are competent. The practical impact of the proposed statutory position amendments was limited to the additional step of having competency certified by the BoE and the preparatory work and prerequisites required of the applicant for that step. The proposal for additional certificates of competency added an independent quality assurance step as the applicant should already have the necessary training and qualifications and they should know how to comply with legislation relevant to their role.

Industry's comment concerning there being no similar requirements in other high-risk industries for practising certificates of competency was incorrect e.g., the occupational licences and registrations for the construction industry, and the numerous ones for electrical licences.

In relation to the concerns regarding the BoE being able to handle the additional volume of certificates of competency – a review was undertaken of the examination processes with the objective of streamlining the application process and written examination process and improvements were implemented.

# Attachment 3 – University of Queensland review recommendations

In 2019, the [then] Queensland Commissioner for Mine Safety and Health, the Coal Mining Safety and Health Advisory Committee (CMSHAC), and the Mining and Quarrying Safety and Health Advisory Committee (MSHAC) collaborated with the University of Queensland (UQ) to fulfil a [then] statutory function of the CMSHAC and MSHAC. This function was to periodically review the effectiveness of the respective Mining Safety Acts and subordinate legislation. Amendments in 2020 to the CMSHA and MQSHA removed this statutory role for CMSHAC and MSHAC to instead provide them with a more strategic role. RSHQ is responsible for leading legislative amendments to the Acts, and this process involves consultation across interested stakeholders. UQ prepared two reports (the UQ Reports) to assist CMSHAC and MSHAC prepare advice and recommendations for the Minister about promoting and protecting the safety and health of persons at coal mines, metalliferous mines, and quarries. UQ consulted with a range of stakeholders before finalising the Reports.

The UQ Reports made multiple recommendations about whether particular provisions are clear, current and comprehensive. UQ did not evaluate the effectiveness of the legislative frameworks. In 2020, CMSHAC and MSHAC tripartite subcommittees comprehensively reviewed the recommendations of the UQ Reports. If tripartite subcommittee agreement was reached about a particular UQ Reports proposal, and if it was then endorsed by CMSHAC or MSHAC, that proposal has been reviewed and categorised by RSHQ, in terms of highest priority. High priority proposals with tripartite support that can be progressed will improve the clarity and precision of the legislation. Some of the proposed amendments will also improve the workability of the legislation and are further strengthened by amendments identified as emanating from the BoI recommendations. The proposals will thus contribute to the continuous improvement of the legislation for the benefit of all stakeholders.

*Proposed change*

The proposed legislation changes result from the UQ Review recommendations are outlined in Table 22 below.

*Table 22 – Proposed legislation changes*

| Section | Problem | Proposed solution |
|---|---|---|
| MQSHA, s.10 - Meaning of operations | The meaning of "operations" in relation to winning and treating, and hard rock are unclear and confusion has arisen relating to when MQSHA applies.<br><br>The MQSHA needs to clearly apply to operations for the treating of minerals, regardless of whether the winning of the minerals is also occurring at the same time, and to operations involving any type of rock i.e., hard or soft rock. | Clarify the meaning of winning and treating by ensuring that operations include treating minerals or rock, even if winning has ceased at the time. Treating should be categorised as a separate activity so that where it occurs on land the subject of a mining tenure, or where it should be subject to a mining tenure, in the case of illegal mining, it is regulated under the MQSHA.<br><br>This would still exclude smelting, refining, stockpiling, or processing on land that is near a mining tenure, and not integral to the winning occurring within an adjoining or nearby tenure. |
| MQSHA, s.11 - Meaning of quarry | Stakeholders have regularly questioned whether it is only the extraction of river gravel that is outside the meaning of a "quarry", or the extraction of all gravel, leading to uncertainty about whether the MQSHA applies in some scenarios. | The proposed amendment will clarify that it is only when gravel or river sand is extracted and not also crushed to produce a product that the extraction will be outside the definition of a quarry. |
| MQSHA, s.9 and CMSHA, s.9 - Meaning of mine/coal mine | Both internal and external stakeholders have expressed difficulty in determining whether operations are adjoining or contiguous with the mining tenure in certain circumstances. | It is proposed that the term "contiguous with" will be deleted, and the terms "adjoining", and "adjacent to" will be retained. |
| CMSHA, s.26 and MQSHA, s.23 - Meaning of supervisor | Some confusion has been reported as to the meaning of the term supervisor as they are 'authorised' by a SSE which is not consistent with other sections | Amend the definition of "supervisor" in the CMSHA and the MQSHA, so that a supervisor is "appointed" by the SSE, in a similar way to others in safety |

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| | covering how other statutory position holders are 'appointed'.<br><br>The meaning also lacks the specific obligations expected of supervisors. | critical positions at mines.<br><br>Confirm supervision requirements under the CMSHR in a similar way to how they are covered under the MQSHR section 96.<br><br>Safety and health obligations of supervisors will be added to the Mining Safety Acts and will include:<br>• Ensuring only competent workers perform tasks<br>• Applying and monitoring controls required by the SHMS including critical risk controls to ensure they are implemented and effective<br>• Inspecting work sites and observing how tasks are undertaken. |
| CMSHA, s.101 and MQSHA, s.94 - Stopping operations by SSHRs | SSHR who stop operations at a mine need only notify SSEs. If operations have been stopped by a SSHR at a mine, then there is reasonably belief that the operations posed a serious danger to the safety and health of workers.<br><br>Inspectors and industry safety and health representatives / district workers' representatives must also be informed about the serious danger that lead to the stopping of operations, and not only the SSE. | Ensure that SSHR who stop operations at a mine must notify SSEs, inspectors, and industry safety and health representatives / district workers' representatives.<br><br>The broader notifications allow input and reinforcement from inspectors and industry safety and health representatives / district workers' representatives who also have key roles in promoting and upholding a HRO culture. |
| CMSHA, s.100 and MQSHA, s.93 - Powers of SSHRs | SSHR cannot easily and effectively fulfill their safety and health functions as they are unable to access information in | Ensure that the SSHR are able to make copies, or request copies of any documents relevant to safety and health, and to access |

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| | any form that it is being kept, including electronically. | SHMS documents at all places at a mine where the documents are available (e.g. through a supervisor's tablet). |
| CMSHA, s.119 and MQSHA, s.116 - Powers of district workers' representatives | An anomaly has been identified in these provisions between the documents the industry safety and health representatives / district workers' representatives can examine and those that they can copy.<br><br>There is no provision to allow an industry safety and health representative/district workers' representative to require certain documents to be provided to them within a reasonable period of time. It is unreasonable to expect these safety representatives to attend a mine in person to view parts of the SHMS and to personally photocopy documents. | Ensure that industry safety and health representatives / district workers' representatives are able to copy documents amenable to examination under this section.<br><br>In addition, ensure access to these documents within a reasonable specified period, or to have these documents provided to them, within a reasonable period of time. |
| CMSHA, ss.93 to 98 and sections of the CMSHR about the election of SSHRs | The existing SSHR election process in the CMSHA and CMSHR does not facilitate timely elections.<br><br>There is no clear meaning of practical miner in section 94 CMSHA. In particular circumstances this section allows coal mine workers to elect 2 coal mine workers who are practical miners to inspect coal mining operations.<br><br>The BoI has identified that the CMSHR does not require the returning officer for a ballot in respect of the election of a SSHR to give notice of the result of the | It is proposed that a similar election process, and process for determining the number of site safety and health representatives to that in the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 (NSW) will replace the existing site safety and health representative election process and remove the cap on numbers of SSHRs in the CMSHA and CMSHR.<br><br>It is proposed that practical miner will be defined as a coal mine worker who has at least 2 years' experience in the coal mining operations for which the |

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| | ballot to the industry safety and health representative. | coal mining workers consider risk is not at an acceptable level.<br><br>Ensure that the industry safety and health representatives are routinely informed of the outcome of site safety and health elections. |

*Impacts and benefits*

- There will be no significant costs or impacts.
- The proposed amendments will clarify existing provisions or improve the workability of existing provisions.

# Attachment 4 – Other minor amendments

Contemporary legislation provides the foundation for RSHQ to regulate safety and health effectively and efficiently in relation to resources industry operations. This is important because the resources safety and health regulatory framework, including the operation of RSHQ, is largely funded by industry via the safety and health fee paid by resources sector operators. Accordingly, RSHQ strives to ensure it delivers value for money as Queensland's resources safety and health regulator.

RSHQ's commitment to continuous improvement and data driven regulation routinely identify potential operational and administrative improvements for the four Resources Safety Acts. Issues currently identified which, if appropriately addressed, are expected to aid the effective and efficient administration of the legislation are outlined below.

## Approval of forms by CEO

The approval of forms for use under the Resources Safety Acts, including the PG Act for a safety context, is currently by the relevant chief inspector. This approach is generally appropriate for the majority of forms; however, there are some safety and health related functions under the Resources Safety Acts which are overseen by the CEO, not the relevant chief inspector – e.g., relating to the setting of fees such as the safety and health fee and the coal mine workers' health scheme (the CMWH scheme). The day-to-day administration of these functions are undertaken by the Occupational Health and Finance teams (respectively) within RSHQ. In practice, a fee related form is approved by the Chief Operating Officer before again being formally approved by the chief inspector as currently required under the CMSHA. Similarly, a CMWH scheme related form is first approved by the Executive Director, Occupational Health before the second approval by the chief inspector. While a chief inspector can delegate their powers under the relevant Act, the delegation is limited to an inspector appointed under the relevant Act, which precludes both the Chief Operating Officer and the Executive Director, Occupational Health. It is inefficient requiring fee and health related form to be approved by the relevant heads of the RSHQ divisions who administer the relevant functions as well as the applicable chief inspector, who is not responsible for administering those functions under the legislation.

### Activities for meaning of prohibited explosives

The Explosives Act establishes a framework for declaring an explosive to be a prohibited explosive in the Explosives Regulation 2017 (the Explosives Regulation). Schedule 1, Part 1 provides for four categories of prohibited explosives:

- Items 1 and 2 provide that small arms ammunition and ammunition containing explosives are prohibited (with particular exemptions provided for).
- Item 3 provides that an explosive containing a chlorate mixed with an ammonium salt is a prohibited explosive.
- Item 4 provides that particular types of fireworks are prohibited explosives.

Items 1 and 2 prescribe small arms ammunition and ammunition (respectively) as prohibited explosives. However, exemptions are created based on the way in which the small arms ammunition and ammunition are dealt with. Small arms ammunition is for example not a prohibited explosive if it is used as a distress signal or wildlife control device. Items 3 and 4 provide for particular types of explosives to be prohibited explosives.

When read as a whole it is clear that the intention of the Explosives legislation is to prohibit certain ammunition, whilst allowing limited handling by specified persons or with respect to specified activities associated with the ammunition. However, there is ambiguity with the prohibited explosives provision in the Act as it could be interpreted as the intention was only for types of explosives to be declared as prohibited explosives, rather than also permitting specified persons or activities associated with explosives. This ambiguity needs to be addressed.

### Direction of explosives inspectors and authorised officers by Minister

Under the Explosives Act, explosives inspectors and authorised officers are currently subject to direction by the Minister. This is a legacy matter that serves no practical purpose, particularly when viewed in the context of how the Explosives Act is administered – i.e., since 1 July 2020, the Explosives Act is administered by RSHQ (an independent statutory body). Moreover, explosives inspector appointments (including to the role of chief inspector) are decided by the CEO, with authorised officers subsequently appointed under the Explosives Act by the chief inspector of explosives. In this context, the current arrangements do not provide a sufficient separation of powers between the Minister and officers of the independent statutory body responsible for administering the Explosives Act. It is considered more appropriate that the CEO can direct the activities of explosives inspectors and authorised officers as opposed to the Minister.

### Requirement to give name and address

Inspectors' powers under the four Resources Safety Acts each include provisions enabling an inspector to require a person to give and verify details including their name and address. Failing to do so when required to is an offence under the Mining Safety Acts (maximum penalty—40 penalty units) and the Explosives Act (maximum penalty—20 penalty units). However, there is an oversight with the PG Act which currently does not include an offence provision, even though the Act requires an inspector to warn a person that failing to provide the information is an offence. In addition, the Explosives Act contains two inconsistencies – namely the maximum penalty is inadequate when compared to the Mining Safety Acts and the address requirement is not limited to a person's residential address as it is with the other Resources Safety Acts. As a result, a postal or business address could currently be given, which could result in difficulties if a summons needs to be served.

### Notice of explosives import or export

The Explosives Act requires an importer of explosives to advise the chief inspector in writing of the planned import of explosives and when those explosives arrive. This is to ensure imported products can be effectively monitored, controlled, and inspected as needed. Similarly, an explosives exporter is required to advise the chief inspector of any export of explosives for monitoring purposes. The Explosives Act currently does not specify timeframes for the notice requirements; however, explosives information bulletin 21, issued by the chief inspector, states that the notice must be at least seven days before the planned activity. There have been issues with some operators not giving sufficient notice, particularly in relation to import explosives. Consequently, this often doesn't provide sufficient time for the Explosives Inspectorate to schedule and conduct an inspection before the consignment is transported further. This is a potential safety and security risk, particularly for imported explosives if they do not meet the requirements of the Act (e.g., labelling, packaging, etc.) or are found not to be appropriately packed for safe onward transportation (e.g., as a result of a rough seas during shipping, etc.).

### Notification of diseases

Under CMSHA notification requirements an SSE who receives a report of a reportable disease, such as coal workers' pneumoconiosis, is required to give an inspector and an industry safety and health representative notice about the disease occurrence. An SSE typically receives information about a reportable disease diagnosis of a worker through a health assessment report, under the CMWH scheme (prescribed by the CMSHR). A copy of the report is required, under the CMSHR, to be given by the appointed medical adviser to the worker's employer and RSHQ. An SSE may also receive a report about a disease from another source.

Notification of prescribed diseases by SSEs is one pathway that enables an understanding of disease occurrence across industry. However, there are several pathways whereby the regulator becomes aware of disease occurrences. RSHQ also receives reports of accepted workers' compensation claims for diseases from the Office of Industrial Relations and is progressing mechanisms to receive reports from Queensland Health through the Notifiable Dust Lung Disease Register recently established under the *Public Health Act 2005.*

The current SSE notification obligation can result in duplication and inefficiency in reporting requirements for SSEs and also the associated administration by RSHQ (i.e., reconciling duplicate reports). A worker diagnosed with a reportable disease may for example be reported more than once if an SSE receives more than one report about the disease occurrence, or if multiple SSEs receive a report about the same worker's disease occurrence. In almost every such scenario, RSHQ has already been made aware of the diagnosis via a separate mechanism (e.g., through the health assessment report given to the CEO under section 50A of the CMSHR).

The MQSHA also contains similar notification requirements concerning prescribed diseases and also has related issues involving duplication and inefficiency in reporting requirements.

While the notification of reportable diseases received by industry safety and health representatives (under the CMSHA) and district workers' representatives (under the MQSHA) provide information about disease occurrences; the information may not correlate to risk levels at specific mines or the industry (i.e., coal or mineral mines and quarries) because a disease may not have originated from the mine site where it was reported, or even from exposure in that industry sector.

A further issue is that the notification requirements for reportable diseases prescribed under the CMSHR and the MQSHR differ in terms of both the diseases prescribed, and the circumstances in which such a disease must be reported. The understanding of respiratory health conditions diagnosed in mine and quarry workers has evolved since these differing notification requirements were prescribed in the respective regulations. In addition, the long latency of certain diseases means that a worker may only be diagnosed after moving to a different mining industry sector or leaving the mining industry. A consistent list of prescribed diseases and circumstances for reporting is required across the CMSHR and MQSHR because workers from both the coal and mineral mines and quarries industries can potentially be at risk of contracting the same respiratory diseases, given many workers are employed across both industry sectors during their working lives. Clarifying the disease list and reporting circumstances will benefit all stakeholders.

### Disclosure of information

Existing disclosure of information provisions under the Resources Safety Acts are too restrictive and currently prevent information sharing with non-resources agencies (e.g., Workplace Health and Safety Queensland), even where the information could assist in achieving improved safety and health outcomes. For instance, the Mining Safety Acts and the Explosives Act limit the general disclosure of information by the respective chief inspector to agencies administering laws about safety and health in mining or explosives [respectively]; and the RSHQ Act limits general disclosure of information by the CEO to a 'prescribed entity' – the meaning of which is limited under section 67 of the RSHQ Act to the chief executive of a department that administers a Resource Act, the WHS Prosecutor or the director of public prosecutions. Accordingly, the current provisions are not sufficient to support an information sharing culture. This is also at odds with Safe Work Australia's National Compliance and Enforcement Policy, which stresses the importance of information sharing and collaboration between WHS regulators. This policy recognises the need for regulators to work collaboratively, sharing information and intelligence, tools and strategic initiatives, to ensure that regulators maintain a nationally consistent approach to compliance and enforcement and ensure emerging national issues are dealt with appropriately. The proposed amendments would facilitate safety and health related information disclosure to general WHS regulators.

### RSHQ Act consequential amendments

On 1 July 2020, the RSHQ Act established RSHQ as the independent statutory body responsible for regulating safety and health in the Queensland resources sector. RSHQ's main functions are administering the Resources Safety Acts and to further their purposes. This is reflected in the Administrative Arrangements Order which lists RSHQ as the applicable administrative unit and the CEO as the applicable responsible head for administering the CMSHA, the Explosives Act, the MQSHA and the PG Act, Chapter 9, and Chapters 10 to 15 to the extent they relate to resource industry safety and health. The role and powers of the CEO are essentially akin to those of the chief executive (i.e., Director-General) of a government department.

Currently, RSHQ, the Department of Resources (DoR) and Queensland Treasury jointly administer the PG Act. RSHQ has administrative responsibility for resource industry safety and health related matters, DoR for tenures related matters and Queensland Treasury for royalties related matters. Note that there is some overlap and shared provisions between RSHQ and DoR.

Consequential amendments were made to the Resources Safety Acts, predominantly by the RSHQ Act, to accommodate the establishment of RSHQ on 1 July 2020. However, a few minor omissions and related issues have since been identified, including references to the 'chief

executive' and 'department' that should have been changed to the 'CEO' and 'RSHQ' but were inadvertently missed at the time. Also, there was inconsistent treatment for making applications or giving or lodging documents as well as the relevant person for internal review of certain applications under the PG Act.

Another example relates to the approval of forms under the PG Act which currently allows both the chief executive and the chief inspector to approve forms under the PG Act. However, the chief inspectors' powers are inadvertently limited further than they should be given the separation of RSHQ from DoR. Namely, the chief inspectors' powers to approve forms are limited to forms under Chapters 7 to 10. This is an issue in relation to approval of a form for making an application for internal review of a decision under Chapter 12 about a safety and health related matter, as such a form must currently be approved by the chief executive of DoR – this form should also be able to be approved by the chief inspector for use in relation to an RSHQ internal review application. Other minor edits are also required to better align the Resources Safety Acts and reflect the structural shift of RSHQ being established as a standalone statutory body.

### *Proposed change*

It is proposed to amend the Resources Safety Acts and to make consequential amendments to applicable regulations to address the abovementioned issues and to facilitate operational and administrative improvements. This would include the changes outlined in Table 23.

*Table 23 – Proposed legislation changes*

| Topic | Proposed change |
|---|---|
| Approval of forms by CEO | Amend the four Resources Safety Acts to enable the CEO to approve forms for use under the respective Act relating to fees (i.e., forms about the safety and health fee); and to approve forms under the CMSHA about the health of persons who are, will be or have been employed at a coal mine (i.e., forms about the CMWH scheme). |
| Activities for meaning of prohibited explosives | Amend section 10 of the Explosives Act to clarify that a regulation may declare an explosive to be a prohibited type of explosive; and that the declaration may exclude the handling of an explosive in relation to specified activities or by specified persons from being a prohibited explosive. This change supports the current application of the legislation - it does not make any material changes to its application. |
| Direction of explosives inspectors and authorised officers by Minister | Amend sections 81(1)(a) and 105E(3) of the Explosives Act to provide that explosives inspectors and authorised officers are subject to the directions of the CEO instead of the Minister. |

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| Requirement to give name and address | Amend section 96 of the Explosives Act to clarify that an inspector may require a person to state and give evidence to verify the person's residential address and to increase the maximum penalty for noncompliance at section 96(5) of the Explosives Act to 40 penalty units. Additionally, amend section 757 of the PG Act to insert an offence provision and a protection from liability provision and based on the amended section 96 of the Explosives Act (i.e. subsections (5) and (6) as amended for consistency above). |
| Notice of explosives import or export | Amend section 37 of the Explosives Act to clarify that the written notice of the intention to import or export an explosive must be given to the chief inspector at least seven days before the intended import or export date unless the authority holder has a reasonable excuse. If providing at least seven days' notice is not possible (e.g., relevant date not yet known or previously provided date changes); then the notice must be given as soon as possible after the authority holder becomes aware of the intended import or export date (or revised/updated intended import or export date). |
| Notification of diseases | It is proposed to amend the Mining Safety Acts, and make consequential amendments to the CMSHR and MQSHR, to streamline reportable disease notification obligations to achieve the following outcomes:<br><br>• to remove duplicative and/or unnecessary reportable disease notification requirements whilst ensuring the regulator still has appropriate oversight of prescribed disease occurrences across both mining industry sectors and industry safety and health representatives/district workers' representatives are aware of prescribed diseases in their respective industries; and<br>• to improve consistency of the reportable diseases prescribed under the CMSHR and MQSHR, and the circumstances in which an SSE must notify of an occurrence.<br><br>The following proposed amendments aim to facilitate operational and administrative improvements and to facilitate consistent reporting obligations across the Queensland mining industry.<br><br>1. Amend section 198 of the CMSHA and section 195 of the MQSHA to provide that for subsection (6), an SSE is not required to notify of an occurrence of a reportable disease in the circumstances prescribed under a regulation.<br>Note – refer also to consequential amendments at '2.' Below.<br>2. Make consequential amendments to the CMSHR and MQSHR to prescribe the circumstances in which notification is not required by an SSE under 198(6) of the CMSHA and section 195(5) of the MQSHA, including if the SSE has already previously reported the same disease occurrence (i.e., the same disease diagnosis relating to the same |

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| | individual made at a point in time). Additionally, for the CMSHR, the SSE is not required to give an inspector notice under section 198(6) of the CMSHA if the SSE became aware of the diagnosis through a report in relation to an assessment under Chapter 2, Part 6, Division 2 (e.g., a health assessment report).<br>3. Amend existing prescribed disease provisions in the Mining Safety Acts and the CMSHR and MQSHR to:<br>a. streamline and clarify the circumstances in which a prescribed disease must be reported by an SSE; and<br>b. update the list of prescribed diseases to ensure consistency across the two regulations.<br><br>Note - RSHQ intends for the details of proposed amendments to the CMSHR and MQSHR (i.e., as mentioned at '2.' and '3.' above) to be developed further in consultation with key stakeholders. |
| Disclosure of information | Amend the Resources Safety Acts to better enable disclosure of information with government agencies responsible for administering safety and health laws as follows:<br><br>• Amend section 275A(2) of the CMSHA and section 255(2) of the MQSHA to broaden the application of these provisions to agencies administering a law about safety and health generally by omitting the current reference to 'in mining'.<br>• Amend section 132(2) of the Explosives Act to also include reference to administering a law about safety and health. This is in addition to the current reference to a law about explosives (which is to remain).<br>• Amend section 67(3) of the RSHQ Act to broaden the meaning of 'prescribed entity' to include the chief executive of a department, or agency of Queensland, the Commonwealth, or another State, that administers an Act about safety and health. |
| RSHQ Act consequential amendments | Amend the Resources Safety Acts to include all identified outstanding consequential amendments related to the commencement of the RSHQ Act. The proposal ensures the Resources Safety Acts include contemporary provisions and references aligning with the establishment of RSHQ and achieve relative consistency amongst these Acts. Details about the proposed amendments are provided at Attachment 5. |

*Impacts and benefits*

- The proposed amendments to the Resources Safety Acts and consequential amendments to the CMSHR and MQSHR as outlined above will ensure the issues identified are appropriately addressed and facilitate streamlined requirements to provide overall efficiencies for the regulator and the regulated.
- The proposed streamlined and consolidated reportable disease notification requirements will also provide the regulator with a more holistic view of disease occurrences across the wider mining industry and across the breadth of workers' mining and quarrying careers.
- The RSHQ Act consequential amendments confirm the intent of the RSHQ Act in establishing RSHQ as Queensland's independent safety and health regulator as a separate entity from the department responsible for administering general resources legislation (e.g., resources tenures) and ensures applicable referencing and process errors are addressed, reducing the unnecessary confusion and ambiguity caused by these previous omissions and resulting administrative workarounds. The RSHQ Act consequential amendments do not impose adverse impacts on stakeholders.
- When viewed as a whole, these proposed minor amendments provide for improved regulatory guidance; improved information sharing with other government safety and health regulators; and provides some reduction in regulatory burden for industry and for operational improvements and efficiencies for the regulator, which in turn also has benefits industry and community safety relating to explosives matters.
- There are no direct adverse consequences expected from these proposals.

*Results of consultation*

Submissions received in relation to the 'Approval of forms by CEO', 'Direction of explosives inspectors and authorised officers by Minister', 'Requirement to give name and address', and 'RSHQ Act consequential amendments' minor proposals did not go into detail. However, they indicated stakeholders were either supportive or supported the proposals in principle (i.e., stating they had no issues with, or objections to, the proposals). Submissions received in relation to the remaining minor proposals contained more detail and these are discussed below.

Activities for meaning of prohibited explosives

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 6 | 3 | 0 | 3 |

Six (6) submissions addressed this proposal in the CRIS and the responses received were mixed:

- Three (3) stakeholders (AESIG, Kestrel and the MEU) supported this proposal either wholly, partially or in principle.
- Three (3) stakeholders (FDAQ, NIOA and SIFA) provided a response that did not confirm if they support or don't support this proposal.

The MEU supported this proposal. In their submission the AEISG commented they had no apparent issues with the proposal and Kestrel stated in their submission they had no objections to it. In contrast, the FDAQ, NIOA and SIFA collectively sought further information and consultation on the proposal, with NIOA and SIFA both stating they had concerns with the proposal, including wanting to ensure any potential unintended consequences are mitigated.

This is a minor amendment only to ensure the Explosives Act betters aligns [legislatively] with the provisions already contained within the Explosives Regulation. There is no policy change – it merely seeks to clarify the existing policy position in the legislation, so the status quo is more clearly maintained.

NIOA and SIFA also commented on this proposal not addressing all situations associated with the handling of prohibited and restricted explosives, including munitions for defence related matters. SIFA also recommended that legislative changes consider the process in which a prohibited explosive is declared and the ability to access prohibited explosives for research and development or testing purposes.

Section 12 of the Explosives Act already provides for approvals for trial etc. of unauthorised or prohibited explosives. RSHQ is also aware of industry concerns with the existing explosives legislation pertaining to situations associated with the handling of prohibited and restricted explosives (e.g., testing weapons which use prohibited explosives). RSHQ is looking to progress amendments to the Explosives Regulation 2017 to address this separately to the proposed amendment to section 10 of the Explosives Act as outlined in the CRIS. Future consultation with key industry stakeholders regarding this is proposed.

In relation to the proposed amendments outlined in the CRIS, RSHQ will provide a draft version of the Bill for consultation with key stakeholders, which will contain the draft provisions as drafted by the Office of the Queensland Parliamentary Counsel. Stakeholders will be able to comment on the detail of proposed changes when the draft Bill is released for consultation.

### Notice of explosives import or export

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 6 | 3 | 2 | 1 |

Six (6) submissions addressed this proposal in the CRIS and the responses received were mixed:

- Three (3) stakeholders (AESIG, Kestrel and the MEU) supported this proposal either wholly or in principle.
- Two (2) stakeholders (NIOA and SIFA) did not support this proposal.
- The remaining stakeholder (FDAQ) provided a response that did not confirm if they support or don't support this proposal.

The AEISG and the MEU supported the proposal to include a minimum 7-day period for giving notice of the intention to import or export explosives. The Kestrel submission indicated in principle support, stating they had no objections to it.

SIFA questioned why the change is needed and the impact that these changes would have on the business operations of explosives importers. SIFA recommended RSHQ clearly articulate why the proposed change is needed and that why the problem that it is addressing can only be addressed by imposing a statutory timeframe. SIFA argued the change must be evidence-based and needed to address an actual risk and have a demonstrable public safety benefit. In their submission, NIOA asserted that there was no justification for placing a statutory notification timeframe on authority holders that import or export explosives, stating that they believed most authority holders notify in an appropriate timeframe, and not all imports are inspected on arrival. NIOA also commented on international supply chains being the key cause because the actual date of an import consignment often won't be known until one or two days prior, and for imports by air it can be less than thirty-six hours.

RSHQ contends that the CRIS appropriately outlined the rational for the proposed amendments, including that are required so consignment inspections can be appropriately scheduled because numerous authority holders have been giving inadequate notice. The

proposed amendment aligns with explosives information bulletin 21 and contains a reasonableness component, meaning no offence is committed if the authority holder has a reasonable excuse for not providing the information within the required timeframe. For example, if the arrival in the State is delayed from the anticipated arrival date, or if the arrival date is not known at least seven days prior, such as in relation to some air freight shipments.

However, if compliance with the 7 days' notice is not possible, the proposal would still place an obligation on the holder to notify as soon as possible after they become aware of the intended arrival date and/or updated arrival date. Many authority holders already do this, and so would not be negatively affected by the proposed amendments.

### Notification of diseases

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 14 | 14 | 0 (viewed as a whole)<br>4 (some elements | 0 (viewed as a whole)<br>4 (some elements) |

Fourteen (14) submissions addressed this proposal in the CRIS and the responses, received in relation to four questions asked in the CRIS, were largely supportive of some or all the proposed amendments. All 14 submissions responded to the proposal to streamline prescribed disease notification requirements. Whereas only 11 submissions provided feedback regarding the proposal for consistent prescribed reportable diseases lists under the Mining Safety Regulations.

- 11 stakeholders (APPEA, Bulloo SC, Chinova, MMAA, Kestrel, Glencore, four (4) anonymous submissions (two individual stakeholders and two industry stakeholders) and the AWU) supported the proposal to streamline prescribed disease notification requirements either wholly, partially or in principle.
- The MEU did not support the proposal to streamline prescribed disease notification requirements.
- Two (2) stakeholders (Professor David Cliff and an anonymous submission (individual stakeholder)) did not confirm if they support or don't support the proposal to streamline prescribed disease notification requirements.
- Eight (8) stakeholders (Bulloo SC, Professor David Cliff, MMAA, Kestrel, Glencore, the AWU, the MEU and an anonymous submission (individual stakeholder) supported the proposal for consistent prescribed reportable diseases lists under the Mining Safety Regulations either wholly, partially or in principle.

- Three (3) stakeholders (APPEA and two (2) anonymous submissions (both individual stakeholders) did not support the proposal for consistent prescribed reportable diseases lists under the Mining Safety Regulations.

Question 20 of the CRIS asked stakeholders if they saw any issues with the proposed streamlining of prescribed disease notification requirements; and if so, to identify what these were. APPEA, Bulloo Shire Council, Chinova, MMAA, Kestrel, Glencore, four anonymous stakeholders (two individuals and two from industry) and the AWU did not raise any issues, with stakeholders generally of the view that removing unnecessary duplication being a positive outcome. While Glencore provided in principle support for streamlining requirements, they commented that more details would have been required to provide a meaningful submission. Stakeholders will have the opportunity to review the draft legislation when the consultation draft Bill is released in the second half of 2023. Details of proposed amendments to the CMSHR and MQSHR to prescribe the circumstances in which notification of a prescribed disease is not required are also intended to be developed further in consultation with key stakeholders.

APPEA and an anonymous industry stakeholder both stated that it is important to note that the disease may not have originated from the site where it was reported, or even from exposure in that industry sector. They commented that careful consideration is required regarding the obligations/duties on the employer in such circumstances. The streamlining proposal already takes these matters into consideration and the proposed consolidating of reportable disease lists will also ensure cases are notified regardless of where the exposure may have occurred.

In their submission, the MEU commented that the CRIS does not provide sufficient information as to what changes are proposed and recommends further consultation (which the CRIS states is proposed). The MEU stated they do not support any change that reduces the information provided to ISHRs in relation to reporting of prescribed diseases. Instead, the MEU supports increasing the prescribed disease reporting requirements to include notifying the SSHR. The MEU also suggests that additional details about the worker should be notified along with a prescribed disease diagnosis, including their name, time at the mine, time in the industry and occupational history. RSHQ notes the feedback, including the MEU's support for the name of the mine worker, and potentially other information, being included in a disease notification to help identify any duplicate notifications. RSHQ notes the suggested expansion of the reporting requirement to include SSHRs, however this is not supported.

Question 21 of the CRIS asked stakeholders if they thought there are any other circumstances where notification of a prescribed disease occurrence by an SSE may not be needed; and if so, to provide details of these.

Glencore suggested that the appointed medical adviser (AMA), not the SSE, should have responsibility for making all notifications, including notifying the SSE and ISHR as they have access to the relevant information – e.g., if a disease diagnosis is indicated in section 4 of a worker's health assessment report. RSHQ notes the suggestion; however, it will not always be the AMA that makes or confirms a diagnosis of a prescribed disease in a mine worker or former mine worker (e.g., diagnosis or confirmation may be made by an approved examining doctor, an approved supervising doctor, a relevant medical specialist, the mine worker's GP, etc.).

The AWU and MEU did not believe there were any other applicable circumstances noting that this may lead to important health information being lost. The MEU submission also included information and anecdotal evidence to indicate that a reduction in prescribed disease notification requirements may result in some disease occurrences not being reported.

Question 22 of the CRIS asked stakeholders if they thought there are any alternative mechanisms (i.e., not reliant on SSEs notifying of prescribed disease occurrences) that would still ensure the regulator and other stakeholders (including industry safety and health representatives and district workers' representatives) are kept appropriately informed of disease occurrences in the mining industry; and if so, to provide details of these.

Several submissions suggested that the obligation to notify could be imposed on qualified medical practitioners (e.g., the one making/confirming a diagnosis) as an alternative approach, with a number suggesting an obligation on the diagnosing medical practitioner under the Public Health Regulation 2018 and also prescribed the relevant diseases in the same regulation). RHSQ notes the feedback provided; however, medical practitioners, other than those directly associated with providing health surveillance services for mine workers under the Mining Safety Acts, are not regulated under the Mining Safety Acts. The lists of reportable diseases notifiable under the Mining Safety Acts must continue to be prescribed under the Mining Safety Regulations because this relates directly to how the objects of the Mining Safety Acts are to be achieved in relation to providing for the health assessment and health surveillance of persons who are, will be or have been mine workers under these Acts.

Professor David Cliff gave, as an example, the Surveillance of Australian workplace Based Respiratory Events (SABRE) scheme in NSW in relation to the above. RSHQ is progressing mechanisms to receive reports from Queensland Health through the Notifiable Dust Lung Disease Register recently established under the *Public Health Act 2005.* This will further support the prescribed disease notification requirements under the Mining Safety Acts. This approach should yield similar information as would be available through the NSW SABRE scheme, which is a voluntary notification scheme established to determine the incidence of occupational lung diseases in NSW.

The AWU suggested notification via industrial organisations as an alternative, noting that it may assist where a member that is hesitant to disclose the information (for whatever reason) to the SSE. RSHQ does not support an alternative notification mechanism via industrial organisations.

Feedback from Kestrel and Glencore suggested that RSHQ be the common point to where prescribed disease occurrences are reported from the various sources; and for RSHQ to produce summary reports to be provided to the ISHR/DWR and any other relevant stakeholders. They suggested RSHQ could also report the disease occurrence to the current employer of the mine worker so that the SSE could check that there are no additional occurrences that have been reported to the SSE that the regulator is not aware of. The feedback is noted; however, the notifications of prescribed disease occurrences need to be made available to RSHQ as the regulator from a variety sources (currently including SSEs), so RSHQ is kept appropriately informed of disease occurrences in the mining industry. RSHQ already uses some of this data to prepare summary information (e.g., on mine dust lung disease occurrences) included safety performance and health reports published by RSHQ. The suggested reporting by RSHQ of a disease occurrence to the SSE for a mine worker employer is not supported or possible, because RSHQ does not collect information concerning individual mine workers' work locations (i.e., at which mine site/s an individual worker is engaged).

Question 23 of the CRIS asked stakeholders if they agreed with updating the lists of prescribed reportable diseases in the CMSHR and MQSHR and also to make them consistent across the two regulations (and to provide details why or why not).

Eight of the 11 stakeholders that responded to this question supported the proposal to make the prescribed reportable diseases lists consistent across the two Mining Safety Regulations. Kestrel also noted that this was a sensible step forward given how many of our people work across coal and metalliferous mines across their working lives.

While in support of the proposal, Glencore and the MEU commented that further consultation on the detail of the diseases was required. Details of proposed amendments to the CMSHR and MQSHR including to prescribe the circumstances in which notification of a prescribed disease is not required and the consolidated lists of prescribed diseases are intended to be developed further in consultation with key stakeholders.

One anonymous individual stakeholder did not support the proposed consistent lists being prescribed in the regulations. The stakeholder stated that "as these are forever changing and new diseases are identified there needs to be an open approach to this (otherwise the CMSHR would require re-writing continuously)". RSHQ disagrees with this statement because the approach of prescribing notifiable diseases in regulations is used consistently across

government agencies including Queensland Health (e.g., notifiable conditions prescribed under the Public Health Regulation 2018). The limited number of notifiable diseases prescribed under the Mining Safety Regulations has remained consistent for many years and these are unlikely to require frequent updates in future because consistency is key for accurate long-term health monitoring activities.

APPEA and an anonymous industry stakeholder also did not support the proposed consistent lists being prescribed in the Mining Safety Regulations. The identical submissions instead recommended consolidating all prescribed diseases into one list maintained by Queensland Health (i.e., the notifiable conditions prescribed under Schedule 1 of the Public Health Regulation 2018). These stakeholders suggest the same can be done for diseases of interest under the PG Act and of interest to WHSQ. The rationale provided is that a centralised list of all notifiable diseases would make it simpler and easier for industry to locate the information.

This feedback is noted; however, the reporting of the notifiable conditions under the Public Health Regulation 2018 is not done by industry – rather it is done by clinicians and pathology laboratories. Also, some reportable diseases under the Mining Safety Regulations (e.g., occupational asthma and occupational cancer) may not be eligible for listing under the Public Health Regulation 2018, because the Minister for Health needs to be satisfied a condition is a significant risk to public health before it may be prescribed – refer *Public Health Act 2005*, section 64(2). Further, the RSHQ maintains that the lists of reportable diseases notifiable under the Mining Safety Acts must be prescribed under the Mining Safety Regulations because this relates directly to how the objects of these Acts are to be achieved in relation to providing for the health assessment and health surveillance of persons who are, will be or have been mine workers under the Mining Safety Acts.

### Disclosure of information

| Total number of submissions received | Supported<br><br>(This includes support wholly, partially or in principle) | Did not support | Unclear |
|---|---|---|---|
| 5 | 3 | 0 | 2 |

Five (5) submissions addressed this proposal in the CRIS and the responses received were mostly supportive:

- Three (3) stakeholders (AESIG, NIOA and the MEU) supported this proposal either wholly, partially or in principle.

- Two (2) stakeholders (FDAQ and Kestrel) provided a response that did not confirm if they support or don't support this proposal.

The MEU submission was in support of this proposal. The AEISG and NIOA submissions indicated partial/in principle support, with both submissions commenting they had no apparent issues with the proposal.

The FDAQ commented that there was not enough information on what the proposed change was and requested further detail. In relation to the Explosives Act, the proposal is to amend section 132(2) to also include reference to administering a law about safety and health (i.e., in addition to the existing reference to a law about explosives, which is to remain). This change will allow the chief inspector to communicate information that comes to the chief inspector's knowledge under the Explosives Act to an officer of a State or Commonwealth department or agency responsible for administering a law about safety and health (e.g., SafeWork Australia). RSHQ will also provide a draft version of the Bill for consultation with key stakeholders, which will contain the draft provisions as drafted by the Office of the Queensland Parliamentary Counsel. Stakeholders will be able to comment on the detail of proposed changes when the draft Bill is released for consultation.

Kestrel stated in their submission that they had no objections to any of the proposed minor amendments apart from the disclosure of information proposal. Kestrel commented that the disclosure of safety information for industry learnings and improved safety outcomes is a great outcome. However, Kestrel said they would need to see the specifics of what is being proposed to be able to consider any scenarios where this information could be used inappropriately or in a manner not consistent with this objective.

RSHQ already has enabling provisions relevant to disclosure of information contained within the Resources Safety Acts. The proposal contained here is to merely edit the relevant provisions to enable the disclosure of information to share with health and safety regulators compared to the current wording which, for example, under the CMSHA currently only allows for information to be shared with regulators responsible for safety and health in mining. This has been found to be too narrow in application and is proposed to be broadened to also include general safety and health regulatory agencies. The disclosure of safety and health information for industry learnings and improved safety outcomes for industry are addressed under the 'Information sharing to improve safety' topic, the response to which also addresses the points raised in the Kestrel submission.

*Final proposal*

The final proposal remains largely unchanged from the proposed other minor amendments to the Resources Safety Acts and regulations (as applicable) as identified in Attachment 4 of the CRIS and as outlined in Table 23 (above). Specifically, the 'Approval of forms by CEO', 'Activities for meaning of prohibited explosives', 'Direction of explosives inspectors and authorised officers by Minister', 'Requirement to give name and address', 'Disclosure of information' and 'RSHQ Act consequential amendments' minor amendments are to progress with no changes. The 'Notification of diseases' proposal has had two minor changes – firstly the proposed amendments to section 198(6) of the CMSHA and section 195(6) of the MQSHA are now to insert a head of power for circumstances where reporting by the SSE to an inspector is not required to be prescribed in regulation, with the clarification that an SSE only needs to report each disease diagnosed in a worker once to be prescribed in the regulations. Secondly, to include additional amendments to the CMSHR and MQSHR to provide a mechanism to enable the CEO to identify whether a report by an SSE of a disease occurrence relating to a worker is a duplicate. The 'Notice of explosives import or export' minor amendment has been refined (refer Table 23) to clarified that if providing at least seven days' notice of the intended explosives import or export date is not possible (e.g., relevant date not yet known or previously provided date changes); then the notice must be given as soon as possible after the authority holder becomes aware of the intended import or export date (or revised/updated intended import or export date).

# Attachment 5 – Details for RSHQ Act consequential amendments

## *CMSHA amendments*

Section 129 – redraft to align with section 126 of the MQSHA (i.e., omit subsection (b)) because it is no longer relevant in the RSHQ context as the commissioner no longer has a role in initiating a prosecution under the CMSHA.

Sections 295 and 296(2) – change 'chief executive' references to 'CEO'.

Schedule 3, definition of *region* – change 'chief executive' reference to 'CEO'.

## *Explosives Act amendments*

Section 62B – contains references to 'chief executive' and 'department'. Reword section 62B to change 'chief executive' references to 'CEO' and to replace 'public service employees employed in the department' to 'RSHQ'. Refer section 205 of the CMSHA and section 202 of the MQSHA for guidance.

Section 80A(1)(g) – change 'the department' reference to 'RSHQ'.

Section 122(1)(b) – change 'the department's' reference to 'RSHQ's'.

Section 126D(3)(b) – change 'the department's website' reference to 'a Queensland government website' and insert a new subsection containing the definition for 'Queensland government website' similar to that under the CMSHA, section 72(4) and the MQSHA, section 63(4).

Schedule 2, definition of *appropriately qualified*, example of standing – change 'the department' reference to 'the employing office'. Additionally, insert a new definition for 'employing office' that links to the meaning given under the RSHQ Act (i.e., see section 29(1) of the RSHQ Act).

## *MQSHA amendments*

Schedule 2, definition of *region* – change 'chief executive' reference to 'CEO'.

## *PG Act amendments*

Section 817(2)(b) – after 'an inspector' insert 'or authorised officer (safety and health)'. This will ensure the chief inspector is empowered to review an original decision by an authorised officer (safety and health), which currently [incorrectly] defaults to the chief executive of DoR because of current paragraph (d). This change was missed in relation to the establishment of RSHQ and subsequently when amendments to provide for the two types

of 'authorised officers' (i.e., 'safety and health' and 'general') were made to delineate between those authorised officers appointed for RSHQ versus those appointed for DoR.

While the CEO is the RSHQ equivalent to a department's chief executive, this change refers to the chief inspector as the reviewer for an original decision by an authorised officer (safety and health). This change still effectively retains the status quo because there is no DoR equivalent to the chief inspector and the chief inspector is the more appropriate reviewer for a decision by an authorised officer (safety and health).

Section 817(2) – insert a new paragraph (c) and renumber existing paragraphs (c) and (d) to (d) and (e). New paragraph (c) should deal with an original decision by the chief inspector, which should be reviewed by the CEO, but currently [incorrectly] defaults to the chief executive because of current paragraph (d). Suggested new paragraph (c) wording is as follows:

> (c) if the original decision to which the application relates was made by the chief inspector—the CEO; or

This change effectively retains the status quo as the CEO is the RSHQ equivalent to a department's chief executive.

Section 840A(1) – after 'the department's' insert 'or RSHQ's'. This will ensure that costs can also be awarded in relation to RSHQ's costs in relation to a prosecution, as was the case when Resources Safety and Health division was part of the then department (i.e., maintains the status quo).

Meaning of 'relevant person' under sections 842(5), 843(7) and 844(5), paragraph (a)(i) – amend to also include a reference to an application made under section 731AB. Refer to Table 24 for background information.

*Table 24 – Background information for proposed 'relevant person' amendments*

Sections 842(5), 843(7) and 844(5) of the PG Act provide the following:

> ***relevant person***, for an application (or an application under this Act), means—
>
> In this section—
>
> ***relevant person***, for an application (or an application under this Act), means—
>
> (a) the chief inspector, if the application is made under—
>
> (i) section 622 or 728; or
>
> (ii) chapter 9, part 1; or
>
> (b) otherwise—the chief executive.

These meanings do not consider an application to the chief inspector for a GDAA for a gas device made under section 731AB of the PG Act. A GDAA allows the holder to approve gas devices for supply, installation or use in Queensland (e.g., approval of a make and model of a domestic gas BBQ so it can be legally sold in Queensland, etc.).

Section 731AB was inserted into the PG Act by section 286 of the *Land, Explosives and Other Legislation Amendment Act 2019* (LEOLA Act) on 18 September 2020. While this post-dates the 1 July 2020 commencement of the RSHQ Act, the RSHQ Act should have included the necessary consequential amendments to the PG Act (as outlined below) to commence immediately after the commencement of the section 286 of the LEOLA Act.

Currently, the meaning of 'relevant person' under sections 842(5), 843(7) and 844(5) of the PG Act in relation to an application to the chief inspector for a GDAA made under section 731AB of the PG Act default to the chief executive of DoR. This is not correct and not workable as section 731AB is not administered by DoR.

Section 843(1)(b) and (c) – after 'the department' insert 'or RSHQ'. This will ensure that requests for further information (including a report, statement, etc.) relating to an application for a gas work licence, gas work authorisation or GDAA, as administered by the chief inspector, can direct the requested information, etc. be provided directly to another stated officer of RSHQ (e.g., a PG licencing officer).

Section 848(3) – change so the paragraph only applies to the chief executive recording changes under subsection (1) to details relating to a *petroleum authority*[71] and not all authorities, as this [incorrectly] includes the *gas work licence*, *gas work authorisation* and *gas device approval authority* types which are administered by the chief inspector (including keeping of a register as required under s.734AB of the PG Act) and not the chief executive of the department. Additionally, insert a new subsection after subsection (3) as follows (or wording to that effect):

> (3A) The chief inspector must record in the register the details of an amendment made to a gas work licence, gas work authorisation or GDAA under subsection (1).

Section 856(1)(c) – after 'the department' insert 'or RSHQ'. This will ensure a contractor engaged by RSHQ to carry out activities for the administration of the PG Act for RSHQ is also captured by the meaning of *designated person* and provided appropriate protection from liability under the PG Act. An example is an external auditor engaged to audit safety and health fee liability and/or whether liable persons have paid the correct fee amounts, etc.

Section 858 – Include a new subsection after subsection (1) to provide that the CEO may approve forms for use under Chapter 12 (Reviews and appeals). This relates to an 'approved form' required under section 818(b)(i) of the PG Act for making an application for the internal review of a decision. A further amendment is required to subsection (2) to change the 'chapters 7 to 10' reference to 'chapters 7 to 10 and chapter 12' so the chief inspector can also approve the internal review form mentioned under section 818(b)(i) of the PG Act.[72]

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[71] Refer meaning of petroleum authority given in section 19(1)(j) of the PG Act.

[72] Note that a related amendment to section 858 is also proposed as part of 'Other minor amendments' (refer Attachment 4) to allow the CEO to also approve forms under the PG Act relating to safety and health fees, including late payment fees, payable under the PG Act (refer PG Reg, Chapter 9).