

# Queensland resources safety and health

Regulator and funding  
models

Project Management Office Report  
June 2018

CS8377 06/18

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June 2018

The Honourable Dr Anthony Lynham MP  
Minister for Natural Resources, Mines and Energy  
1 William St  
Brisbane QLD 4000

Dear Minister

I am pleased to present this report on options for resources safety and health regulator and funding models for the resources sector in Queensland.

I express my thanks to the dedicated officers of the Project Management Office that has been established to work on this important initiative. I also thank all stakeholders who participated in this review and who have expressed their views in the interests of improving safety outcomes in Queensland.

Thank you for the opportunity to contribute to the important task of establishing a regulatory framework that will best ensure safe and healthy workplaces in the Queensland resources sector.

Yours sincerely

**Bryan Russell**

Independent Executive  
Project Management Office

# Executive summary

## Background

Coal workers' pneumoconiosis (CWP) is a lung disease caused by long term exposure to respirable coal dust. The disease was thought to be eradicated in Queensland until a case was confirmed in 2015.

Since 2015, the Queensland Government has implemented reforms to manage CWP focusing on disease prevention, early detection and providing a safety net for affected coal mine workers. This includes implementing recommendations from the Queensland Government commissioned independent review by the Monash University Centre for Occupational and Environmental Health on the respiratory component of the Coal Mine Workers' Health Scheme (Monash Review).

On 15 September 2016, the Queensland Parliament established the Coal Workers' Pneumoconiosis Select Committee (CWP Select Committee) to conduct an inquiry into the re-emergence of CWP in Queensland. On 23 March 2017, the CWP Select Committee's terms of reference were extended to include occupational respirable dust exposure for other workforce cohorts beyond coal mines.

On 29 May 2017, the CWP Select Committee released report no. 2—Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland. The report made 68 recommendations, including that an independent statutory authority for the regulation of mining safety and health in Queensland should be established.

## Project Management Office Work Programme

The Queensland Government's response to the CWP Select Committee report no. 2 was tabled in the Queensland Parliament on 8 September 2017. The government's response supported, or supported in-principle, all 68 recommendations. In supporting the recommendations, the government accepted the intent of the recommendations and acknowledged that additional analysis and consultation would be required to determine the most appropriate implementation pathway.

The government's response committed to establishing the Project Management Office (PMO) to consult with stakeholders and/or investigate recommendations which relate to structural changes and funding of the resources safety and health regulator. The PMO was tasked with providing advice to the Minister for Natural Resources, Mines and Energy by mid-2018 on options for an alternative regulator model and a sustainable and effective model to fund the regulator. The PMO was led by a PMO Executive, independent of existing government agency structures. This Report forms the advice to be provided to the Minister.

The work of the PMO has focused on 19 recommendations which relate to structural reform and funding of the regulator, however the PMO's work has had regard to the broader approach taken by the CWP Select Committee and remaining recommendations.

Stakeholder consultation has been the centrepiece of the work programme and review undertaken by the PMO. The PMO released a number of discussion papers and focus papers for public consultation between March and May 2018. The PMO also met with a number of organisations representing workers, industry and government through face-to-face meetings, forums and open house consultations.

## Consideration of regulator models

The PMO identified four potential models for the resources safety and health regulator in Queensland:

- Option 1—A Mine Safety and Health Authority, as proposed by the CWP Select Committee
- Option 2—A standalone statutory entity with a different governance structure to that proposed by the CWP Select Committee
- Option 3—A division within a department or agency
- Option 4—A combined work health and safety (WHS) and resources safety and health regulator.

Stakeholders were asked to rate the options in terms of achieving accountability, effectiveness, efficiency, transparency, independence and public confidence.

## Recommended regulator model

Following a review of stakeholder feedback and further consultation, the PMO recommends that the resources safety and health regulator be established as a standalone statutory authority, named the Resources Safety and Health Authority (see organisational chart at p. 8).

The CWP Select Committee's report argues the need for a 'truly independent regulator'. The PMO concurs with the CWP Select Committee's view that a standalone statutory authority will send a clearer message that the regulator is not tied to the economic decision making processes undertaken within DNRME.

The PMO's recommended regulator model has elements of both Option 1 and Option 2 contained in Discussion Paper 1 and reflects suggestions made by stakeholders on how to improve the proposed models. In particular, the recommended model takes account of stakeholders' preferences in relation to:

- the retention of a Commissioner role
- the importance of the advisory function provided by tripartite committee arrangements
- the requirement for an avenue for independent prosecutions
- a dedicated investigative service
- the need for enhanced independent oversight of the performance of the regulator
- a desire to demonstrate that change has occurred within the system.

## Form and function of the regulatory model

### The statutory authority

Establishing the regulator as a statutory authority offers a level of independence and flexibility that is well suited to the management of a safety and health regulator.

The statutory authority would be headed by a Chief Executive Officer (CEO) who would have overall responsibility for the operational performance of the regulator and would report directly to the Minister, but would not be subject to direction by the Minister on operational matters.

The Resources Safety and Health Authority would include the following functions:

- business strategy and services
- research and testing (Simtars)
- occupational health and hygiene
- inspectorate functions encompassing, coal mines, mineral mines and quarries, petroleum and gas, and explosives
- dedicated investigations.

A statutory authority is a distinct legal entity, but, for reporting and finance purposes, is considered part of an administering department. The administering department to which the statutory authority would belong would be a matter for government, however, the PMO would anticipate that the status quo could prevail.

### Resources Safety and Health Advisory Council

The PMO considers that strategic direction, advice, and monitoring in a consultative setting are important elements of a regulatory framework. For this reason, the PMO recommends that a tripartite Resources Safety and Health Advisory Council (the Advisory Council) be established to deliver these functions. It is important to note that the Advisory Council should have a strategic, rather than technical focus. The Advisory Council would include the Commissioner for Resources Safety and Health as chair and members representing industry, workers and government. The CEO would be an ex-officio member of the Advisory Council.

The Advisory Council would be responsible for:

- providing advice to the Minister, including advice on the performance of the regulator
- developing a five-year strategic plan which would identify and prioritise safety and health issues facing the resources sector and provide a meaningful plan of action to address those priority areas

- putting in place mechanisms to identify critical safety and health risks such as CWP across the resources sector
- establishing advisory committees
- receiving regular reports from key operational areas of the regulator.

Existing committees such as the Coal Mining Safety and Health Advisory Committee (CMSHAC) and the Mining Safety and Health Advisory Committee (MSHAC) may be accommodated in this model to provide a source of expert advice to the Advisory Council on matters relevant to those sectors.

The Advisory Council, and any advisory committee it chooses to establish, will be independent of the operations of the regulator and would not be able to direct the regulator in the discharge of its regulatory functions. The Advisory Council will, however, be instrumental in working with the regulator to set strategic pathways for delivering improved safety outcomes for the resources sector in Queensland.

## Commissioner for Resources Safety and Health

The PMO's recommended regulatory model includes the role of Commissioner for Resources Safety and Health. This is in response to stakeholder comments which pointed to the need to retain a monitoring and review role to ensure improved oversight of regulatory performance. This role is quite different to the existing Commissioner for Mine Safety and Health role.

It is proposed that the Commissioner for Resources Safety and Health be an independent statutory office holder, not a public servant, with responsibilities including:

- contributing to the strategic direction of the regulator
- performing regular and routine (preferably annual) performance monitoring of the regulator
- providing advice to the Minister
- chairing the Resources Safety and Health Advisory Council which has a strategic function
- preparing an annual report to the Minister for tabling in the Parliament.

## Prosecutions

In a change from the existing model, the Commissioner would have no prosecutorial function. This decision stems from an expectation of independence of decision making in relation to prosecutions.

The PMO recommends that serious offences under resources safety legislation be referred to the independent Office of the Work Health and Safety (WHS) Prosecutor for prosecution. This provides a prosecution function which is independent of existing agencies and structures, provides an office with legal experts experienced in prosecutorial functions and provides a single point for prosecutions which will improve consistency, transparency and efficiency.

## Additional oversight and assurance

The PMO suggests that additional and independent assurance and oversight may be provided through the Queensland Audit Office (QAO) undertaking annual financial audits of the authority, similar to other public sector entities. In addition, the QAO may also be utilised to conduct performance audits which would include identifying whether organisational objectives are being achieved. This function would supplement the proposed annual performance monitoring undertaken by the Commissioner. The Queensland Ombudsman would also continue to provide an independent avenue for those with concerns or complaints relating to the authority to be investigated.

## Location of the regulator

The CWP Select Committee recommended that the regulator should be established in Mackay to ensure that key personnel were all based in Central Queensland.

The PMO has found that the case for relocation has not been made.

The PMO notes the advantages of the existing model and the particular benefits derived from a regionally specific knowledge base. The PMO is satisfied that the regulator should retain its current head office arrangements, supported by the existing network of regional offices. However, further work is required to determine whether the current resourcing of regional offices provides optimal coverage for inspectorate activities.

## Simtars' fee for service

The CWP Select Committee recommended that Simtars' fee for service activity in relation to occupational hygiene be discontinued, with affected staff redeployed to undertake research and/or occupational hygiene inspection activities.

The PMO does not support the recommendation at this stage. The PMO considers that withdrawing Simtars from the area of respirable dust monitoring will leave a gap in the number of providers available in the short term, which has potential consequences for service delivery in this safety critical area. The PMO recommends that service delivery arrangements in respect of respirable dust monitoring continue in the immediate term.

While discontinuing the fee for service for occupational hygiene is not supported, the PMO considers that there is merit in Simtars giving greater attention to providing a quality assurance function within the dust monitoring market over the longer term—noting that market capacity will be a key determinant in Simtars' exit from current service arrangements.

Beyond the dust monitoring issue, the PMO is sympathetic to the notion that research undertaken by Simtars is a critical function of the regulator. The PMO supports a continuation of efforts to engage stakeholders in the development of a relevant research strategy for the organisation, and suggests the proposed Advisory Council, or a subcommittee thereof, could serve a useful role in providing advice on research that aligns with the strategic priorities of the organisation.

## Mobile health units

Mobile health units can be used to great effect in certain circumstances. However, in the context of health assessments carried out under the Coal Mine Workers' Health Scheme, the PMO finds the case for the provision of mobile health units has not been made by the CWP Select Committee.

In terms of health surveillance in regional areas, the key issues are quality of service and access to health assessments. Regarding the service quality, and in particular diagnostic services, significant improvements have been implemented through the adoption of the recommendations outlined in the Monash Review. In terms of access, the PMO was unable to find evidence that access to services was a problem. Accordingly, in the context of these key indicators there is not in the PMO's view, a case for the provision of mobile health units.

## Proposal to fund the regulator from royalties

The CWP Select Committee found that the safety and health fee is not an appropriate method of funding a truly independent mine safety and health regulator and recommended that the safety and health fee be abolished and replaced with a dedicated proportion of coal and mineral royalties.

The PMO found that utilising royalties to fund the resources safety and health regulator would not align with the primary purpose of royalties. The distribution of funding from royalties is intended to benefit all Queenslanders rather than a discrete cohort.

The PMO does not support the proposal that the regulator should be funded by a dedicated proportion of royalties.

## Consideration of funding models

Having concluded that royalties do not represent an appropriate substitute for the current safety and health fee, the PMO examined potential alternative methods of funding a resources safety and health regulator.

The PMO identified the following options as potential funding models:

- Option 1—Current safety and health fee
- Option 2—Increased fees within existing tiers
- Option 3—New tiers and adjusted fees
- Option 4—A base and variable fee.

The development of these options was based on the need for full cost recovery of the regulatory activities within a framework that is effective, efficient and transparent.

The feedback received in relation to a preferred funding model was equivocal. Some stakeholders indicated that none of the models presented in the discussion paper were acceptable. Additional models were suggested by some stakeholders including funding the regulator from a proportion of workers compensation premiums, billable hours of the regulator, production and general government revenue.

## Recommended funding model

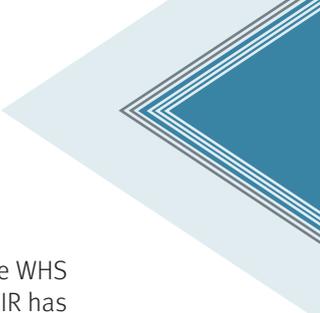
The PMO recommends that Option 3—New tiers and adjusted fees, be adopted as a funding model for the regulator, to replace the existing safety and health fee.

The recommended funding model represents the most appropriate mechanism to deliver a reliable and sustainable revenue stream for the regulator. This model would add two additional tiers to the current safety and health fee—comprising new tiers for operators with 11 to 19 workers and operators with 20 to 99 workers. Operations with five or fewer workers would continue to be exempt.

The recommended funding model broadens the revenue base and spreads the cost burden across additional tiers. It also allows for greater equity by setting fees to be more progressive, which in turn presents an opportunity to improve the sustainability of the funding model. In terms of effectiveness, the advantage of this model is that it remains administratively straightforward and provides increased flexibility in relation to fee setting to deliver full cost recovery.

## Proposal to expand definition of coal mine worker

Three of the CWP Select Committee recommendations considered by the PMO related to the proposed expansion of the definition of coal mine worker. The proposed category of 'coal worker' would include workers involved in the transportation and handling of coal outside a coal mine including rail workers (e.g. coal train loaders and drivers), port workers (e.g. dozer, stacker/reclaimer, and ship loader operators), power station workers, and maritime workers (e.g. tug and line boat crew).



The PMO considered these recommendations and found that workers, such as those involved in the transportation and handling of coal, fall within the jurisdiction of WHS legislation administered by the WHS regulator (Workplace Health and Safety Queensland within the Office of Industrial Relations (OIR)). OIR has advised the PMO that OIR is best placed to respond to the recommendations, and that these matters would be taken forward by OIR. The PMO supports this approach.

## Other issues

There are opportunities within the current review process that may deliver further benefits to the Queensland resources sector including:

- A review of the *Mining and Quarrying Safety and Health Act 1999* and regulations to ensure that workers covered by this legislation are afforded the same protection as workers covered by coal mining legislation. This is particularly urgent in relation to health surveillance and monitoring.
- Continuing the current legislative reform programme to ensure that penalties for offences under mining legislation are equivalent to those under other safety legislation.
- Adoption of enforceable undertakings, enabling the resources safety and health regulator to enter into a binding agreement with mine operators or authority holders to undertake improvements to safety and health management.
- A review of staffing arrangements in regional Queensland with, if necessary, a repositioning of staff to ensure that regional offices are appropriately staffed.

## Conclusion

The PMO acknowledges that structural changes do not, in themselves, protect workers from risks to their safety and health. The management and control of workplace risks involves, among other things, targeted intervention coupled with robust monitoring and review, directed at continuous improvement. The organisational structure, including sound governance arrangements, can provide the framework to facilitate these outcomes.

The PMO recommends a standalone statutory authority supported by a new funding model and incorporating a strategic Advisory Council to provide the required framework.

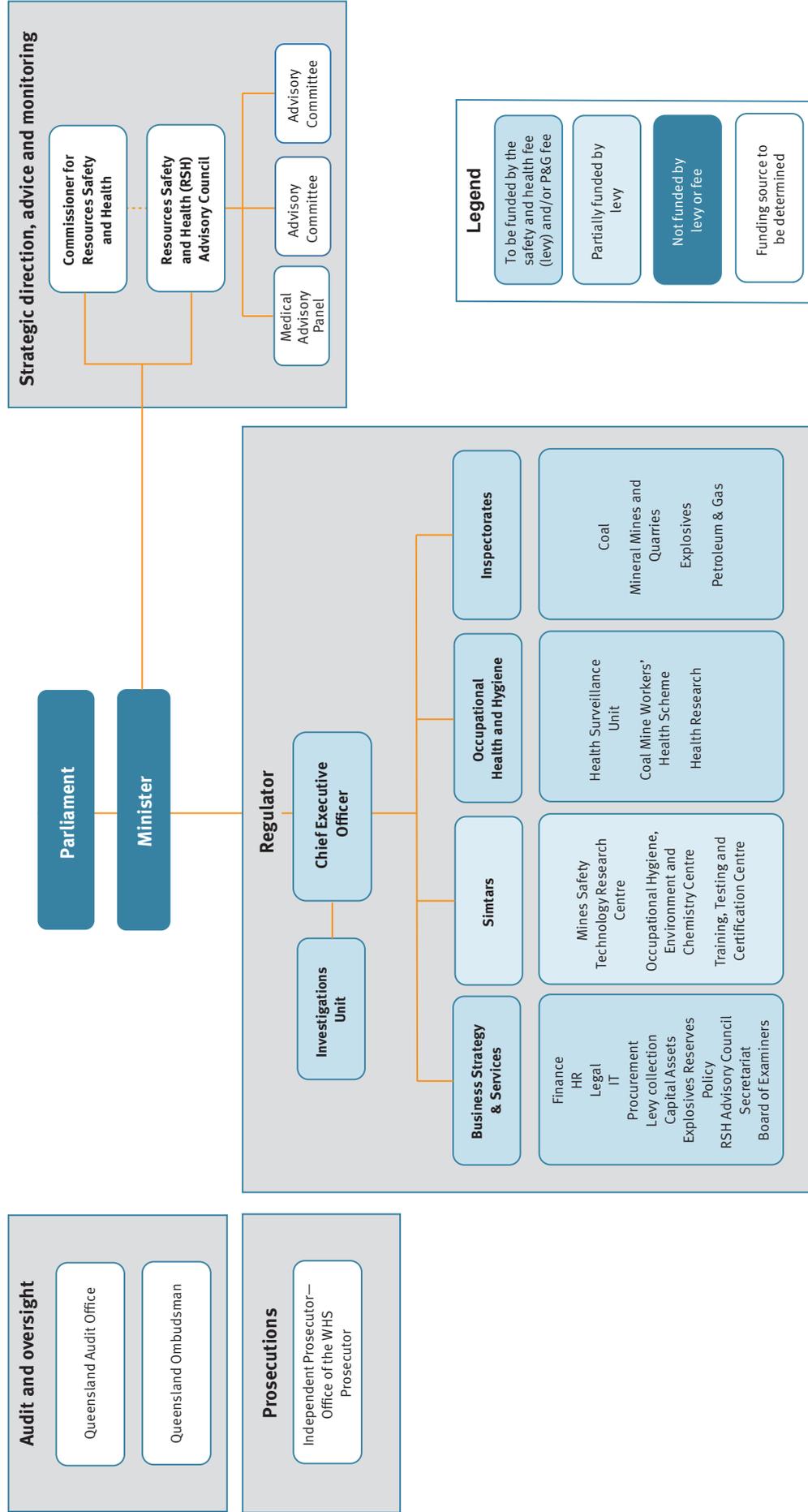
If agreed, this approach will involve a body of work to give effect to the new regulator and its funding arrangement. In particular, the creation of a standalone statutory authority will require:

- new legislation to establish the authority and describe its various functions
- amendment to existing resources safety legislation to provide for components of the regulator model and recommended funding model
- further consultation with stakeholders to describe and explain the operation of the new models
- changes to administrative systems, where required, to support the funding model
- additional costings to determine a more accurate position on the funding needs of the regulator.

It is the PMO's belief that the proposed changes provide for the creation of a clear and comprehensible regulatory environment for workers and operators, managed by an independent regulator, with advice, direction and oversight provided through an Advisory Council and a Commissioner.

A change of regulatory model cannot undo the harm that occupational disease, illness or injury have brought on workers. It is our sincere hope that the recommendations proposed in this Report can provide a structure capable of ensuring that such risks can never again be so readily discounted.

# Resources Safety and Health Authority Organisational Chart



# Recommendations

## Recommendation 1

The resources safety and health regulator be established as a statutory authority, named the Resources Safety and Health Authority.

## Recommendation 2

The Resources Safety and Health Authority be established under its own enabling legislation.

## Recommendation 3

The Resources Safety and Health Authority be overseen by a Chief Executive Officer who is a statutory office holder under the enabling legislation. The Chief Executive Officer will report to the Minister responsible for resources safety and health, however, the Chief Executive Officer will not be subject to the direction of the Minister on operational matters.

## Recommendation 4

That a dedicated Investigations Unit be established in the Resources Safety and Health Authority, reporting directly to the Chief Executive Officer.

## Recommendation 5

That an independent Resources Safety and Health Advisory Council be established to provide high level strategic advice to the Minister on the performance of the Resources Safety and Health Authority, including developing a five-year strategic plan for the authority.

## Recommendation 6

The Resources Safety and Health Advisory Council will be chaired by the Commissioner for Resources Safety and Health and include members representing the interests of employers, employees and government, with the Chief Executive Officer of the Resources Safety and Health Authority as an ex-officio member.

## Recommendation 7

The Resources Safety and Health Advisory Council may establish subcommittees, which may include existing advisory committees such as the Coal Mining Safety and Health Advisory Committee and the Mining Safety and Health Advisory Committee.

## Recommendation 8

An independent Commissioner for Resources Safety and Health be established as a statutory office holder, reporting to the Minister responsible for resources safety and health.

The responsibilities of the Commissioner for Resources Safety and Health will include contributing to the strategic direction of the regulator, performing regular and routine (preferably annual) performance monitoring of the regulator, providing advice to the Minister, chairing the Resources Safety and Health Advisory Council, and preparing an annual report to the Minister for tabling in Parliament. The Commissioner for Resources Safety and Health will not have a role in prosecutions under resources safety legislation.

## Recommendation 9

The Office of the Work Health and Safety Prosecutor is utilised for prosecution of serious offences under resources safety legislation.

## Recommendation 10

The safety and health fee be replaced with a funding model with new tiers and adjusted fees.

## Findings

Topic	Findings	Section of this report
Parliamentary oversight	1. The PMO finds the existing parliamentary committee arrangement is not deficient in its oversight of the activities of the department or the regulator. The PMO does not see a need to change this, nor does it see a need to establish a single function parliamentary committee vested with the responsibility of reviewing operational decisions of the regulator.	4.4.1
Mackay relocation	2. The PMO finds no case has been made to relocate the resources safety and health regulator to Mackay. The PMO notes the advantages of the existing model and the particular benefits derived from this regionally specific knowledge base, and suggests that a review of resourcing is undertaken to determine whether the current staffing of regional offices provides optimal coverage for inspectorate activities.	5.1
Simtars fee for service	3. The PMO does not support the CWP Select Committee recommendation in relation to discontinuing fee for service activity in relation to occupational hygiene. The prospect of reduced, or lower quality, monitoring in this area appears contrary to the CWP Select Committee's intent, and the PMO finds that service delivery arrangements in respect of respirable dust monitoring should continue in the immediate term.	5.2
Simtars quality assurance function	4. The PMO notes strong and persuasive feedback from some stakeholders that Simtars is well placed to provide a quality assurance function in the dust monitoring market. The PMO considers there is merit in moving to such a position in the longer term—noting that market capacity will be a key determinant in Simtars' exit from this activity.	5.2.6
Simtars research	5. The PMO notes recent action by Simtars to enhance the transparency of research activity, in particular the establishment of a research steering committee, and the intention to engage stakeholders in the development of a five-year research strategy. The PMO suggests the proposed Resources Safety and Health Advisory Council, or a subcommittee thereof, could serve a useful role in providing advice on strategic priorities in relation to research.	5.2.6
Mobile health units	6. Mobile health units can be used to great effect in certain circumstances. However, in the context of health assessments carried out under the Coal Mine Workers' Health Scheme, the PMO finds the case for the provision of mobile health units has not been made.	5.3
Royalties as funding source for the regulator	7. The PMO found that utilising royalties to fund the resources safety and health regulator would not align with the primary purpose of royalties and would conflict with best practice in cost recovery. The PMO finds that utilising royalties is not a sustainable and effective funding source for the regulator.	6.2
Royalties as funding source for research	8. While the notion of utilising royalties to fund the regulator has been rejected, the CWP Select Committee's suggestion that surplus income be invested to fund research was examined. The PMO found no evidence to suggest that an investment fund would provide a more effective means of funding than current arrangements.	6.5

Findings (continued)

Topic	Findings	Section of this report
Funding the regulator	9. The PMO finds that the method for calculating worker numbers in determining the safety and health fee should be reviewed to ensure administrative efficiency.	6
Funding the regulator	10. The PMO finds that the use of a base and variable funding model, as presented in Option 4 of Discussion Paper 2, does not present a workable short term solution. However, the PMO suggests that further investigation and consultation be undertaken to determine whether this model would be suitable to fund the regulator in the longer term.	6
Expanding the definition of 'coal mine worker'	11. The PMO considered the CWP Select Committee's recommendations relating to expanding the definition of coal worker and found that those workers are covered by work health and safety legislation. The PMO agrees that the Office of Industrial Relations is best placed to respond and take forward work relating to those recommendations.	9
Other: Legislative review	12. The PMO finds inconsistencies between the statutory protections afforded to different sectors of the resources industry. It is suggested that a review of the <i>Mining and Quarrying Safety and Health Act 1999</i> and regulations be undertaken to ensure that workers covered by this legislation are afforded the same protection as workers covered by coal mining legislation. This is particularly important in relation to health surveillance and monitoring.	10
Other: Review of penalties	13. Penalties for offences under safety legislation serve as a deterrent to non compliance. It is important that penalties across various legislative instruments are consistent. The current legislative programme to bring penalties under mining legislation in line with other safety legislation should continue.	10
Other: Enforceable undertakings	14. In the interests of swiftly securing demonstrable benefits to workers, the PMO suggests consideration be given to the adoption of Enforceable Undertakings for resources safety and health matters.	10, 11

# 1 Introduction

## 1.1 Project Management Office (PMO) review

On 15 September 2016, the Queensland Parliament established the Coal Workers' Pneumoconiosis Select Committee (CWP Select Committee) to inquire into the re-identification of coal workers' pneumoconiosis (CWP) among coal mine workers in Queensland.

On 29 May 2017, the CWP Select Committee released report no. 2—Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland. The report contained 68 recommendations. Some recommendations relate to structural changes and funding arrangements for the resources safety and health regulator, which is currently part of the Department of Natural Resources, Mines and Energy (DNRME)—formerly the Department of Natural Resources and Mines (DNRM).

The Queensland Government's response to the CWP Select Committee report no. 2 was tabled in the Queensland Parliament on 8 September 2017. The government's response supported, or supported in-principle, all 68 recommendations contained in the report. In supporting the recommendations, the government accepted the intent of the recommendations and acknowledged that additional analysis and consultation would be required to determine the most appropriate implementation pathway.

The government's response committed to establishing a Project Management Office (PMO) to undertake a review of the CWP Select Committee's proposed structural changes and funding to the regulator, in consultation with stakeholders. The PMO was established following the tabling of the government's response and has been led by a PMO Executive, independent of existing government agency structures.

The outcomes of the PMO's review and its advice and findings are presented in this Report. This Report provides the government with analysis and evidence to support the establishment of a revised organisational framework for the regulator, and an appropriate funding mechanism to deliver sustainable and effective revenue to support the regulator.

## 1.2 Scope of the PMO review

Of the 68 recommendations contained in the CWP Select Committee report, the PMO has investigated the following 19 recommendations:

- Recommendations 1–8: In relation to the proposal to establish an independent statutory authority and associated governance arrangements.
- Recommendation 9: That the occupational hygiene services offered by Simtars on a fee for service basis be discontinued.
- Recommendations 16–18: A new funding model for the regulator.
- Recommendations 47–49: The operation of mobile health units.
- Recommendations 38, 65 and 66: The renaming of the Coal Mine Workers' Health Scheme and an expanded or additional category of worker.
- Recommendation 61: The proposed abolition of the Coal Mining Safety and Health Advisory Committee and similar committees established under the mining safety and health Acts.

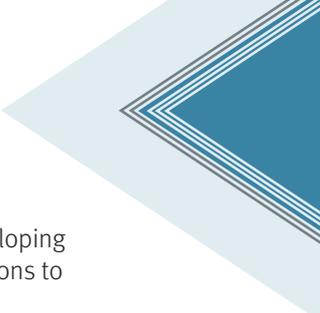
Appendix 1 provides a list of these 19 recommendations as described by the CWP Select Committee.

Recommendations 1 to 8 relate to the CWP Select Committee's finding that there is a need for 'a more effective system of oversight and compliance, including greater levels of transparency and accountability surrounding the roles and responsibilities of all industry players.'<sup>1</sup>

The recommendations relating to the proposed regulator model contain features that are unusual and which, in the government's view, warrant further consideration.

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<sup>1</sup> Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, Black Lung White Lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, report no. 2, May 2017, p. 5.



The PMO was tasked with investigating the model proposed by the CWP Select Committee and developing alternative approaches which may be better placed to deliver on the CWP Select Committee's intentions to implement an improved regulatory system. In doing so the PMO:

- prepared alternative models for a resources safety and health regulator
- developed possible funding models in accordance with the government's policy of 'user pays'
- consulted with key stakeholder groups on the merits of the models developed.

In terms of organisational structure, it is the PMO's view that clarity in the definition of roles and responsibilities reduces the likelihood of issues falling through the gaps. Conversely, structures with overlapping roles create doubt about levels of responsibility, which has a negative impact on the effectiveness of the organisation in achieving its objectives. In preparing this advice, the PMO has aimed to present a structure that is not encumbered with complexity and blurred lines of accountability.

In keeping with this philosophy, the alternate models proposed have, as far as possible, had regard for simpler, flatter organisational structures. The models have been considered through a process of targeted engagement with key stakeholders and broader consultation with the public. The alternative regulator and funding models have been described in discussion papers released for public consideration, seeking the views of interested parties on the models provided.

The PMO's work has focused on the 19 recommendations relating to structural reform and funding, while keeping in mind the broader approach taken by the CWP Select Committee and the remaining recommendations encompassing health surveillance and operational processes. The advice provided in this Report has been informed by all of the recommendations contained in the CWP Select Committee report.

Although the PMO is investigating one part of the reform programme proposed by the CWP Select Committee, the PMO recognises that structural change for the regulator is not a panacea for unsafe workplaces.

The PMO is mindful of the 'bigger picture' and has identified a range of initiatives beyond structural reform and funding that need to be considered as part of an ongoing programme of continuous improvement in order to deliver a world class safety regulator.

### 1.3 PMO work programme and stakeholder consultation

Stakeholder consultation has been the centrepiece of the work programme undertaken by the PMO. The PMO has applied a structured and systematic approach to engaging stakeholders in an examination of the recommendations of the CWP Select Committee.

The PMO developed a programme to consult and engage with stakeholders and to further investigate recommendations. A full list of stakeholders consulted is contained in Appendix 2.

Through the course of consultation, the PMO released two discussion papers and five focus papers on the Queensland Government 'Get involved' website and the PMO web page. Key stakeholders were also provided with copies of the discussion papers and focus papers by email or hard copy.

The PMO released the following discussion papers and focus papers over the course of consultation:

Document	Release date	Closing date
Discussion Paper 1: Options for resources safety and health regulator models in Queensland	20 March 2018	27 April 2018
Discussion Paper 2: Funding the resources safety and health regulator in Queensland	1 May 2018	1 June 2018
Focus Paper 1: Overview of governance arrangements for public authorities	20 March 2018	27 April 2018
Focus Paper 2: Proposed location of the regulator in Mackay	20 March 2018	27 April 2018
Focus Paper 3: Simtars fee for service review	20 March 2018	27 April 2018
Focus Paper 4: An examination of the proposal to fund the regulator from mining royalties	11 April 2018	27 April 2018
Focus Paper 5: Mobile health units	1 May 2018	1 June 2018

To assist stakeholders in considering the options proposed in the discussion papers, the PMO also engaged external consultants to provide costings and modelling on regulator and funding options. In April and May 2018, the PMO released a costings paper prepared by BDO on the regulator model options detailed in Discussion Paper 1; and modelling prepared by KPMG on funding options outlined in Discussion Paper 2. These papers are available on the PMO website at: [www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/mining/medicals/pneumoconiosis/consultation](http://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/mining/medicals/pneumoconiosis/consultation)

The PMO initiated face-to-face meetings with key stakeholder groups, including industry, workers representatives, government agencies and resources advisory committees. The PMO also held three public information forums and implemented open house information sessions for stakeholders.

A summary of the actions undertaken by the PMO in consulting and engaging with stakeholders during the review is at Appendix 3.

## 1.4 Acknowledgements

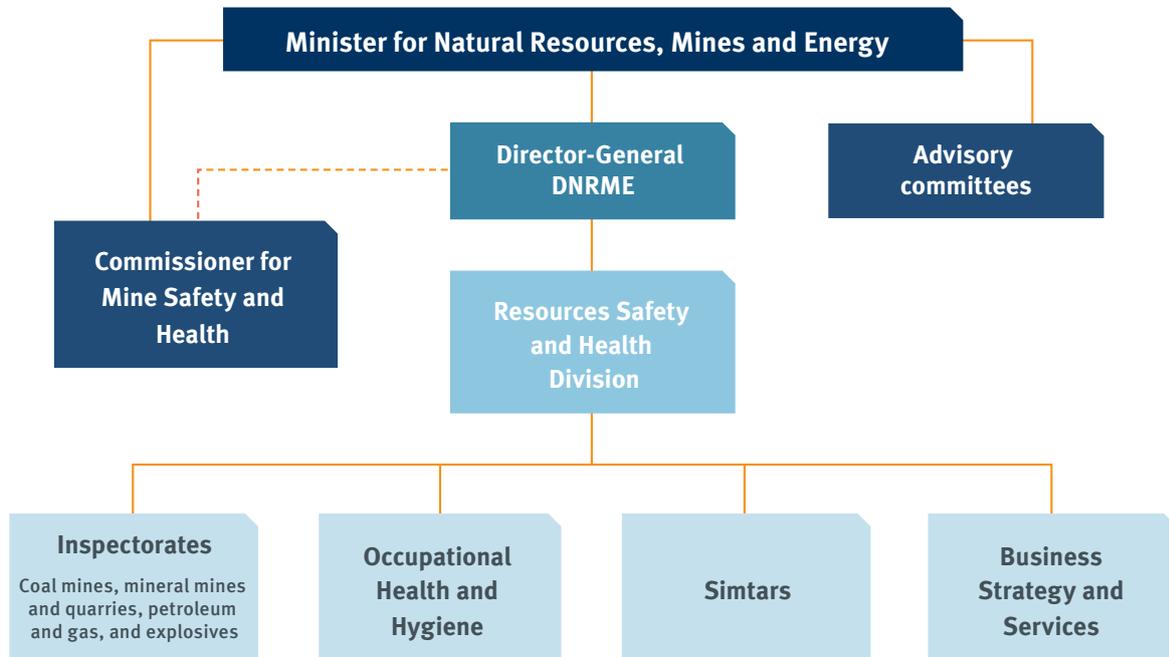
The PMO would like to thank the organisations and individuals across industry, workers representative groups, government and the community who provided submissions and views through the consultation processes and work programme of the PMO.

The PMO would also like to acknowledge DNRME for providing statistical information and material that supported the work of the PMO in undertaking the review and developing options for consultation and engagement with stakeholders.

## 2 Background

### 2.1 Current framework for resources safety and health

Current structure of the Resources Safety and Health division within DNRME



### 2.2 Resources Safety and Health division

The Resources Safety and Health (RSH) division in DNRME regulates safety and health in the Queensland resources sector. The role of the division is to ensure acceptable safety and health standards are established and practised in the resources industry.

The RSH division comprises the following business units:

- Inspectorates—coal mines, mineral mines and quarries, explosives, and petroleum and gas (P&G)
- Occupational Health and Hygiene—Coal Mine Workers’ Health Scheme and Health Surveillance Unit
- Safety in Mines Testing and Research Station (Simtars)—research, testing, engineering, scientific and training services that enhance industry safety and health outcomes
- Business Strategy and Services—performance and governance, policy, capital asset management and business services.

The Executive Director of the RSH division reports to the Director-General of DNRME.

The inspectorates in the RSH division monitor and audit industry performance, to detect and prevent unsafe practices and to hold accountable those who fail to fulfil their safety and health obligations.

The division has staff located across Queensland—in the northern region (Townsville, Mount Isa and Atherton), central region (Rockhampton and Mackay) and southern region (Brisbane and Gold Coast).

## 2.3 Commissioner for Mine Safety and Health

The resources safety and health framework includes the role of Commissioner for Mine Safety and Health. The Commissioner is an independent statutory position established under the *Coal Mining Safety and Health Act 1999*. The Commissioner is a public servant and reports to the Minister for Natural Resources, Mines and Energy.

The functions of the Commissioner include:

- advising the Minister on mine safety and health matters
- chairing the Coal Mining Safety and Health Advisory Committee and Mining Safety and Health Advisory Committee
- monitoring and reporting to the Minister and to the Parliament on the administration of the relevant resources safety Acts
- other functions including bringing proceedings for offences under resources safety legislation.

## 2.4 Advisory committees

The Coal Mining Safety and Health Advisory Committee (CMSHAC) and Mining Safety and Health Advisory Committee (MSHAC) are statutory committees that provide advice to the Minister for Natural Resources, Mines and Energy in relation to the safety and health of mine workers. The committees include representatives from industry, unions and government.

## 2.5 Current funding arrangements for the regulator

Mine safety and health activities of the regulator are funded by the safety and health fee (also known as the levy). The safety and health fee was introduced in 2008 to recover the costs of safety and health services provided by the Queensland Government to the mining, quarrying, explosives and fireworks industries.<sup>2</sup> The safety and health fees applies to all operations regulated under the Coal Mining Safety and Health Regulation 2017, the Mining and Quarrying Safety and Health Regulation 2017 and the Explosives Regulation 2017.

The legislation provides that the responsible person (e.g. mine or quarry operator or explosives authority holder) must pay the safety and health fee to cover the cost of the department's activities carried out for the purposes of safety and health for mining operations or explosives during each financial year.<sup>3</sup>

The safety and health fee is calculated on the number of workers in the industry and the budgeted cost of services. Operations with five or fewer workers are currently exempt from paying the fee.

Estimated revenue collection by safety and health fee in 2016–17

Tier	Fee rate (\$)	No. of operators	Revenue (\$ million)
1–5 employees	0.00	2050	–
6–10 employees	107.10	66	0.06
11+ employees	850.00	141	36.34
		<b>2257</b>	<b>36.4</b>

The revenue from the safety and health fee fully funds the coal mines, mineral mines and quarries, and explosives inspectorates; funds approximately 50% of Simtars activities; and partially funds business strategy services and corporate support costs of the RSH division.

<sup>2</sup> Mining and Other Legislation (Safety and Health Fee) Amendment Bill 2008.

<sup>3</sup> See section 12E of the Coal Mining Safety and Health Regulation 2017, section 11C of the Mining and Quarrying Safety and Health Regulation 2017 and section 178 of the Explosives Regulation 2017.

## RSH business units and activities funded by the safety and health fee

Inspectorate	Safety and health fee
Coal Mines Inspectorate	100% funded
Mineral Mines and Quarries Inspectorate	
Explosives Inspectorate	
Health Surveillance Unit	
Safety in Mines Testing and Research Station (Simtars)	Approximately 50% funded (remaining funding from fee for service activities)
Business Strategy Services and corporate support costs related to RSH business units and activities	Partially funded (remaining funding from P&G fee)

The safety and health fee does not fund the emerging issues related to CWP, which are funded by limited life government funding. In 2017–18, the Office of the Commissioner for Mine Safety and Health was also funded from limited life government funding.

A petroleum and gas fee (P&G fee) is also payable under the Petroleum and Gas (Production and Safety) Regulation 2004. This fee funds the P&G Inspectorate and partially funds business strategy services and corporate support costs which relate to P&G activities. The CWP Select Committee report was silent on the P&G fee. Accordingly, the P&G fee was not considered as part of the PMO review and is not covered in this Report.

## 3 Consideration of regulator model options

### 3.1 CWP Select Committee regulator model

A key recommendation of the CWP Select Committee report is the establishment of the regulator as an independent statutory authority that is separate from the industry facilitation arm of the department.

The CWP Select Committee expressed a view that:

*The responsibility for overseeing the health and safety of workers should not rest with the body also charged with promoting and supporting the industry, namely DNRM. While the objectives of a productive coal industry and a safe and healthy workforce are not altogether incompatible, this split focus is not in the best interest of either goal. A dedicated and independent mining safety and health body would be best positioned and best trusted by workers and the industry more broadly to address these aims without dilution.<sup>4</sup>*

Further, the CWP Select Committee made a key finding that:

*Only a truly independent regulatory body, charged with responsibility for ensuring the safety and health of Queensland's mine and resource industry workers, can restore public faith in the system.<sup>5</sup>*

The CWP Select Committee made a number of recommendations relating to the establishment of an independent statutory authority responsible for ensuring the safety and health of mining and resource industry workers in Queensland. The CWP Select Committee's model was further detailed in an exposure draft Mine Safety and Health Authority Bill 2017 as part of the CWP Select Committee report no. 3,<sup>6</sup> tabled in the Queensland Parliament on 24 August 2017. The report and exposure draft Bill were referred to the then Parliamentary Infrastructure, Planning and Natural Resources Committee for review. The exposure draft Bill lapsed with the dissolution of the Queensland Parliament on 29 October 2017.

The recommendation to establish an independent entity reflects long held concerns by some stakeholders, that compliance and enforcement action by the safety regulator is unduly influenced by decisions to promote and support mining activity in the state. This is widely referred to as 'regulatory capture'. Regulatory capture is taken to mean a regulator becoming so identified with the industry or sector it regulates that impartiality is lost and it can no longer effectively discharge its regulatory functions.

The notion that regulatory capture has occurred is not universally accepted. In 2008, the Queensland Ombudsman undertook a review and released a report on the Regulation of Mine Safety in Queensland and the Queensland Mines Inspectorate. The Ombudsman review did not find any evidence of regulatory capture. The report noted that the inspectorate was not inappropriately influenced by the mining industry in the performance of its functions.<sup>7</sup> Similarly, the CWP Select Committee did not provide any evidence of regulatory capture, nor has the PMO found any indication that the inspectorate has operated inappropriately.

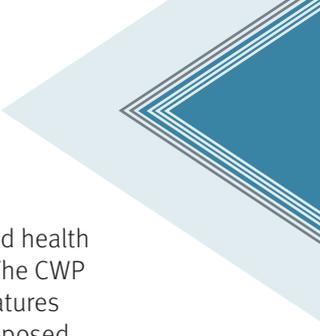
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4 Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, Black Lung White Lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, report no. 2, May 2017, p. 71.

5 As above, p. 6.

6 Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, A Mine Safety and Health Authority for Queensland including the Committee's exposure draft Mine Safety and Health Authority Bill 2017, report no. 3, August 2017.

7 Queensland Ombudsman, The Regulation of Mine Safety in Queensland and the Queensland Mines Inspectorate, June 2008, p. 127.



The CWP Select Committee expressed a firm view that the responsibility for overseeing the safety and health of workers should not rest with the body also charged with promoting and supporting the industry. The CWP Select Committee's proposed regulatory model is founded on this premise; however, a number of features of the model are unusual. With this in mind the following features of the CWP Select Committee's proposed model warrant further consideration:

- a representational board with oversight of the authority's performance as well as day to day operations
- the role of the Minister and proposed reporting arrangements
- the abolition of existing independent statutory advisory committees to be replaced by a board
- a reporting arrangement involving the establishment of a new parliamentary committee with a singular focus on the performance of the new authority
- a Commissioner for Mine Safety and Health with responsibility for compliance and enforcement actions of the regulator as well as chairing the board and a proposed standing dust committee.

Independence is clearly a key driver in the CWP Select Committee's vision for a new regulator, however, the model it proposed is arguably unnecessarily complicated. For example:

- There are multiple reporting lines involving the Minister, the Commissioner and the parliamentary committee and hence the level of accountability of the various roles is clouded.
- The establishment of a new parliamentary committee to monitor and review the regulator is not consistent with current arrangements regarding reporting to a Minister accountable to the Parliament.
- The proposed abolition of the tripartite advisory committees in favour of a board arrangement may have the potential to dilute cooperative participation provided through an advisory committee model.
- The dual role of the Commissioner as the person responsible for regulatory actions (e.g. prosecutions) and as chair of the tripartite board compromises the intent of ensuring independence.

The government's response to the CWP Select Committee report recognised and strongly supported the importance of ensuring the appropriate independence of the regulator from the industry facilitation function within the government. The government noted that it is important that a regulator operates within a governance framework that guarantees independence, transparency and appropriate ministerial oversight. The government also supported the establishment of a resources safety and health regulator for all mineral and energy resources sectors (coal mines, mineral mines and quarries, P&G, and explosives), comprising the inspectorate of each sector.<sup>8</sup>

The government's response detailed the following considerations regarding the regulator structure:

- Governance arrangements should achieve appropriate transparency and ensure the Minister has adequate oversight of the performance of the regulator.
- The regulator must be free from the direction of the Minister or any other entity, including the Parliament, in exercising its operational or regulatory functions, although it must operate with transparency and be accountable to the Minister and stakeholders.
- To ensure appropriate independence, the regulator should not be subject to a board or any other entity in its operational decision making. This could give rise to undue interference in the exercise of regulatory functions.
- A safety and health regulator should cover all mineral and energy resources industries, including mining, P&G, and explosives. Regulation of safety and health across all resources industries ensures consistency and efficiency, and avoids unnecessary duplication of functions within government.
- The role of advisory committees is essential to the tripartite spirit of the mining safety and health regulatory framework.<sup>9</sup>

The government indicated that further investigation and consultation was required to better understand whether the recommendation to establish a 'truly independent' regulator would achieve the outcomes desired by the CWP Select Committee.

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<sup>8</sup> Queensland Government, Response to the Coal Workers' Pneumoconiosis Select Committee report no. 2—Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, September 2017, p. 18

<sup>9</sup> As above, pp. 20–21.

## 3.2 Regulator model options

The PMO identified the following four models as options for the resources safety and health regulator in Queensland:

- **Option 1: A Mine Safety and Health Authority**—This is a standalone authority that reflects the model recommended by the CWP Select Committee (see Appendix 4).
- **Option 2: A standalone statutory entity**—This option proposes the creation of a standalone entity, separate from and independent of DNRME, with a governance structure that differs from that proposed by the CWP Select Committee.
- **Option 3: A division within a department or agency**—This option proposes the establishment of the regulator within an existing governmental structure. The model does not prescribe a government department or agency, and may create a new entity separate and independent of DNRME or provide an amendment to current arrangements.
- **Option 4: A combined work health and safety and resources safety and health regulator**—This option proposes combining the RSH division currently within DNRME with the WHS regulator (Workplace Health and Safety Queensland within the Office of Industrial Relations (OIR)). This would create a single government entity responsible for the administration of safety and health across all industry sectors.

These regulator model options were presented to stakeholders in Discussion Paper 1 against a backdrop of common principles that must be applied when the government is considering establishing or substantially changing government agencies. Stakeholders were asked to rate the options in terms of how well they achieve accountability, effectiveness, efficiency, transparency, independence and public confidence (see section 3.4 of this Report).

In contrast to the model proposed by the CWP Select Committee, the alternative models maintain traditional Westminster arrangements involving portfolio oversight by a Minister. The alternative models did not include a role for a Commissioner. The reasoning behind this approach is that there is currently duplication and overlap between the roles of the Commissioner for Mine Safety and Health and the Executive Director of the RSH division. This is particularly the case in relation to the Commissioner's powers to initiate prosecution action for alleged offences against the various resources safety Acts that fall within the scope of the Commissioner's powers. Duplication in this area has the potential to complicate and confuse the respective roles of these positions which is counter to the need for accountability and transparency.

It is the PMO's view that the essential characteristic of a leadership role for a safety and health regulator (be that Executive Director or Chief Executive Officer (CEO)) is the discharge of executive functions in the management and administration of the regulator. This includes, but is not limited to, the design, development and implementation of operational plans for the regulator including intervention programmes and related compliance and enforcement initiatives. Fundamentally, the head of the organisation is responsible for managing the regulator and developing its organisational culture. The Executive Director or CEO is and should be the regulator.

Against this background, the PMO is of the view that a Commissioner should not have functions, powers or responsibilities that rightly sit with the regulator.

This is not to suggest that there should not be some mechanism to independently review and monitor the performance of the organisation against its stated objectives. An independent review and audit function is essential. The PMO submitted that this function could be provided in the alternative regulator models through existing government structures including the Queensland Ombudsman and the Queensland Auditor-General, and/or through targeted external audits commissioned by the regulator.

Stakeholders were invited to submit their views on each of the four regulator models presented in Discussion Paper 1. Stakeholders also took this opportunity to express their views about ministerial reporting arrangements and the proposal to not include a separate role for a Commissioner.

### 3.3 Governance: ‘more’ or ‘better’

The CWP Select Committee has called for an improved regulatory system, noting that the Queensland coal mining industry ‘needs a more effective system of oversight and compliance including greater levels of transparency and accountability surrounding the roles and responsibilities of all industry players.’<sup>10</sup> The CWP Select Committee’s proposed regulator model encompasses governance arrangements that would, in the CWP Select Committee’s view, offer improved oversight and compliance.

The PMO accepts that developing a new regulatory model may be a step in that direction. However, it needs to be restated that changing the structure and form of the regulator is not, of itself, an answer to future-proofing the resources sector against risks arising from hazards like coal mine dust. The management and control of serious workplace risks involves (among other things) targeted intervention strategies coupled with robust monitoring and review directed at continuous improvement. The organisational structure, including sound governance arrangements, can provide the framework to facilitate these outcomes.

The CWP Select Committee made several references to the need for good governance and this is supported by the PMO. However, the CWP Select Committee’s desire for good governance should not be taken to mean *more* governance. The failures of the system to detect CWP highlight the need for better governance, not necessarily additional governance. The PMO cautions against a reactive approach involving the introduction of multiple layers of administrative control which can ultimately be counterproductive to efficient management. With this in mind, the PMO developed alternative models that offer simpler structures that meet the test of good governance as outlined in the Public Interest Map policy.<sup>11</sup>

### 3.4 Assessment criteria

In undertaking a process of structural reform, government agencies (and business organisations of any type) must satisfy key tests of effectiveness and performance in fulfilling their policy objectives. Ultimately the organisational structure will be measured against accountability, effectiveness, efficiency and transparency. In terms of the proposal for a resources safety and health regulator, the tests of independence and public confidence have been identified as further components of the proposed reforms. Accordingly, these principles are the fundamental elements against which an organisational form for a public entity are to be assessed.

As noted, feedback was sought from stakeholders on how capable each regulator model option was in achieving an appropriate or acceptable level of accountability, effectiveness, efficiency, transparency, independence and public confidence.

In addition to the criteria in the following table, Discussion Paper 1 also noted that the Queensland Government has adopted a Public Interest Map policy which includes the principles and requirements that agencies must consider when proposing the establishment of non-departmental bodies such as statutory entities.

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<sup>10</sup> Coal Workers’ Pneumoconiosis Select Committee, 55th Queensland Parliament, Black Lung White Lies: Inquiry into the re-identification of Coal Workers’ Pneumoconiosis in Queensland, report no. 2, May 2017, p. 5.

<sup>11</sup> <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/public-interest-map-policy.aspx>

Discussion Paper 1 outlined the following explanation for each of the criteria:

Criteria	Explanation
Accountability	Structural arrangements are consistent with the principle of responsible government, in that the entity's functions are accountable to the executive, which is, in turn, accountable to the Parliament. Lines of accountability are clear and responsibilities are well understood.
Effectiveness	The entity is able to successfully support the objectives of the relevant legislation. The entity has access to appropriate levels of resources and expertise.
Efficiency	There is no or minimal overlap or duplication with government departments or other bodies. The entity has flexibility to anticipate and respond quickly to emerging needs and changing regulatory issues.
Transparency	Government, stakeholders and the public are able to clearly identify the objectives of the entity and how it is performing against those objectives.
Independence	The entity carries out its functions and powers as a regulator independently and is free from actual regulatory and political capture.
Public confidence	There is a high likelihood of public confidence in the compliance and enforcement functions. The risk of perceived regulatory and political capture is low.

### 3.5 Indicative costs for regulator model options

To assist stakeholders in assessing the relative merits of the regulator models, the PMO engaged an external consulting firm, BDO, to prepare costings on each model. BDO prepared a costings paper which was provided to stakeholders during the consultation period for Discussion Paper 1 and was available publicly on the PMO website.

The purpose of the costings paper was to provide indicative costings for each regulator model option that would assist stakeholders to better understand the potential cost of each option. The amounts were estimates only, and were not a detailed actuarial analysis of the cost of each item/activity in the options. The costings paper noted that the costings presented may be subject to a more detailed analysis and further refinement as part of any final decision making process by the government on a future regulator model. Importantly, costings were presented in a way that allowed stakeholders to remove and/or reposition elements that may or may not form part of the option. This allowed costs to be tailored to a preferred option. For example, the cost of the Mackay relocation could be folded into any of the options if this recommendation was supported.

The costings paper identified the following cost comparisons for the regulator model options:

	<b>Option 1</b> A Mine Safety and Health Authority (\$ million)	<b>Option 2</b> A standalone statutory entity (\$ million)	<b>Option 3</b> A division within a department or agency (\$ million)	<b>Option 4</b> A combined WHS and resources safety and health regulator (\$ million)
Set-up and one-off costs	26.25–29.05	2.65	0.40	0.40
Ongoing costs:				
• RSH division costs	60.96	60.96	60.96	60.96
• CWP-related additional costs	4.00	4.00	4.00	4.00
• Additional corporate, business strategy and services costs	3.08	1.68	N/A	N/A
• Mobile health units (5 units)	approx. 1.70–2.70	–	–	–
• Relocation to Mackay	1.68	–	–	–
• Simtars no longer offering occupational hygiene as fee for service	0.95	–	–	–
<b>Total cost in Year 1</b>	<b>98.62–102.42</b>	<b>69.29</b>	<b>65.36</b>	<b>65.36</b>
<b>Ongoing annual cost</b>	<b>72.37–73.37</b>	<b>66.64</b>	<b>64.96</b>	<b>64.96</b>

## 3.6 Stakeholder feedback on regulator model options

### 3.6.1 Stakeholder engagement

In February 2018 the PMO held a public information forum to describe the key features of the CWP Select Committee recommendations 1 to 9 and 61. The purpose of the forum was to ensure that stakeholders were well informed about the relevant CWP Select Committee recommendations and therefore better placed to comment on any alternative models that were to be proposed.

In March 2018, the PMO released Discussion Paper 1 regarding options for regulator models. The discussion paper presented the CWP Select Committee's model and three alternative regulator models.

The discussion paper was released for public comment on the Queensland Government 'Get involved' website and on the PMO web page. Key stakeholders also received a copy of the discussion paper by email and/or hard copy.

To assist stakeholders in better understanding key issues regarding the recommendations, the PMO released accompanying focus papers:

- Focus Paper 1—Overview of governance arrangements for public authorities (related to recommendation 2)
- Focus Paper 2—Proposed location of the regulator in Mackay (related to recommendation 5)
- Focus Paper 3—Simtars fee for service review (related to recommendation 9).

The focus papers presented a PMO position on the particular matters raised by the CWP Select Committee. The papers noted that the positions taken by the PMO were views identified from the PMO's analysis and did not reflect government policy. Stakeholders were invited to offer their views on the positions presented by the PMO.

A further public information forum was held in March 2018 to afford stakeholders an opportunity to better understand the options proposed for a regulatory model for resources safety and health in Queensland.

### 3.6.2 Stakeholder feedback

In relation to the regulator model options outlined in Discussion Paper 1, most stakeholders expressed a view that the options presented by the PMO could be improved.

Many stakeholders suggested that there were parts of each option that could usefully apply to a new structure without necessarily favouring any of the models proposed by the PMO.

The responses were largely indicative of polarised views in which some stakeholders called for substantial reform, while others questioned whether any changes were needed at all.

Stakeholders were asked to indicate to what extent each model satisfies the key test of good governance encompassing accountability, effectiveness, efficiency, transparency, independence and public confidence.

In completing the stakeholder response form, either on paper or through the 'Get involved' website, stakeholders were asked to rate each element using a scale from 'strongly agree' to 'strongly disagree'. Each stakeholder provided a score for each element and each model. In total, each model achieved 72 ratings (6 elements × 12 stakeholders). The responses were tallied to provide an indication of the extent to which stakeholders positively or negatively viewed each model.

#### 3.6.2.1 Stakeholder feedback form responses

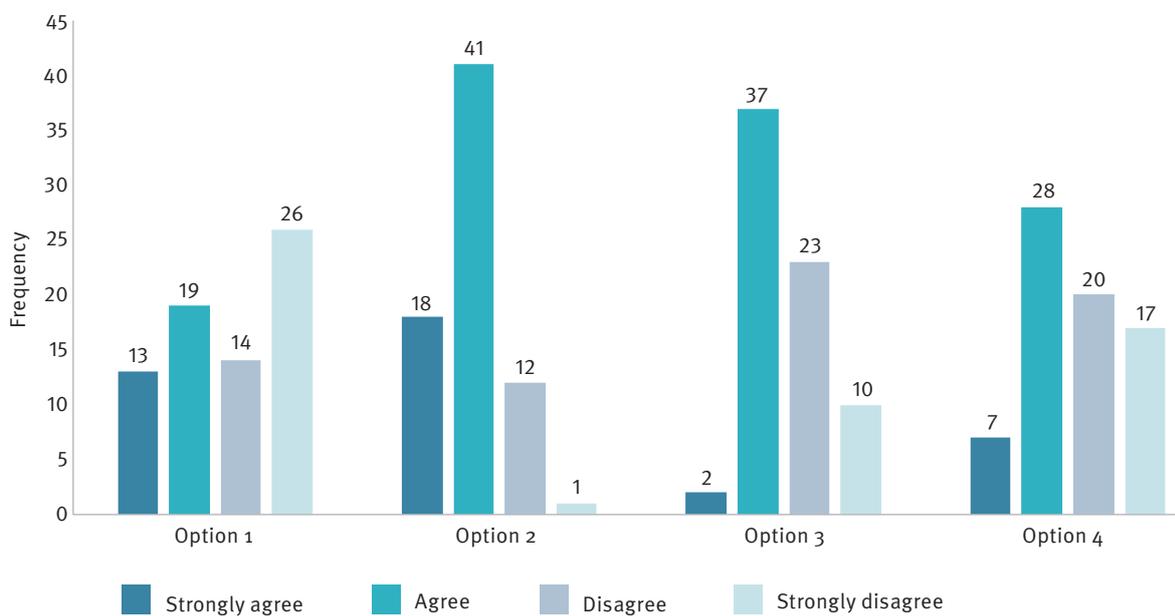
Twelve responses were received from stakeholders using the stakeholder feedback form, either on paper or through the 'Get involved' website:

- seven responses were received from industry bodies or representatives
- one response was received from a group representing the interests of workers
- four responses were received from individuals.

Using the count method mentioned above, the options achieved the following scores:

- Option 2 (A standalone statutory entity) achieved a score of 59. This means that stakeholders strongly agreed (score = 41) or agreed (score = 18) that Option 2 performed well against the included criteria. In contrast, stakeholders gave this option a rating of 13 in terms of disagree (12) or strongly disagree (1).
- Option 3 (A division within a department or agency) achieved a score of 39 in the strongly agree (2) and agree (37) ratings. This model was more favoured than not, with a score of 33 in the disagree (23) and strongly disagree (10) sections.
- Option 4 (A combined WHS and resources safety and health regulator) achieved a score of 35 in the strongly agree (7) and agree (28) ratings and 37 in the disagree (20) or strongly disagree (17) categories, meaning this model is considered less favourable than Options 2 or 3.
- Option 1 (A Mine Safety and Health Authority, as proposed by the CWP Select Committee) achieved the lowest score overall of 32 in the strongly agree (13) and agree (19) ratings. Interestingly stakeholders gave this option a rating of 40 in terms of disagree or strongly disagree, making this the least favoured option.

The rating for each option is presented in the following chart:



### 3.6.2.2 Stakeholder written submissions

Eleven stakeholders provided written submissions, five of whom also completed stakeholder feedback response forms. The five stakeholders who completed both written submissions and response forms were counted above and are not discussed in this section.

The views expressed by the six stakeholders that completed written submissions only are as follows:

- three stakeholders indicated a preference for Option 4 (A combined WHS and resources safety and health regulator)
- one stakeholder indicated a preference for Option 3 (A division within a department or agency)
- two stakeholders did not indicate a preference for any of the models.

### 3.6.3 Outcomes of stakeholder feedback process

#### 3.6.3.1 Option with the highest level of support

The consultation indicates that there is a weight of support for Option 2. However, this needs to be balanced against the qualified support indicated by stakeholders for each of the other options.

While the responses did not yield an overwhelming preference for any of the options, the value of this process lies in the views expressed by stakeholders about how the regulator models can be adjusted to offer improved outcomes. This has informed the PMO’s position in relation to preparing a regulator model that will best serve the interests of workers and the Queensland community.

#### 3.6.3.2 Summary of feedback

In summary, stakeholder feedback and responses to the discussion paper indicate the following:

Option	Level of support	Summary of stakeholder comments
Option 2 (A standalone statutory entity)	Achieved the highest level of support from stakeholders	<p>There was a general view from stakeholders that the option as proposed by the PMO needs to be adjusted to include an improved governance framework. In particular, stakeholder groups indicated support for a Commissioner to ensure that a monitoring and review function remains.</p> <p>Most stakeholders felt that the monitoring and review function is better achieved through a discrete Commissioner role rather than through the services provided by the Ombudsman and/or the Auditor-General.</p>
Option 3 (A division within a department or agency)	Received general support but was not the preferred option	<p>A number of stakeholders felt that the CWP Select Committee had not made a case for substantive structural reform, with a majority either agreeing or strongly agreeing that this option was capable of delivering on the key principles of good governance.</p> <p>A number of stakeholders also noted that there had been no demonstrated failure in the overall system of regulating resources safety and health that would warrant major and disruptive change to the regulator model. The extent to which changing the structure will better position the regulator to manage issues such as CWP is debatable. This view echoes the PMO position that meaningful improvements in the safety performance of the resources sector in Queensland will involve a number of reforms encompassing structural change, operational planning and legislative amendments.</p> <p>Focusing on structural change is overly simplistic and unlikely to deliver improved safety outcomes in the absence of other initiatives. Option 3 however, is seen by some stakeholders as ‘doing nothing’ and by doing nothing the problems associated with the CWP issue will not be solved.</p>

Option	Level of support	Summary of stakeholder comments
Option 1 (Mine Safety and Health Authority, as proposed by the CWP Select Committee) and Option 4 (A combined WHS and resources safety and health regulator)	Options 1 and 4 rated less favourably than Options 2 and 3.	<p>While stakeholders acknowledged the CWP Select Committee's intention in relation to structural/organisational reform to deliver improved safety outcomes, there was a weight of opinion that the CWP Select Committee's model was unlikely to achieve this.</p> <p>This view is best expressed by one respondent who noted that 'the model proposed by the Select Committee does not meet the Government's public interest policy and is unnecessarily complex and confusing in its current form'.</p> <p>Comments on Option 4 were polarised—a number of respondents highlighted the benefits of a co-location, while a significant proportion of stakeholders were very strongly opposed to the notion.</p> <p>Stakeholders pointed to features of the models that should be considered, either for inclusion in a preferred model or as a longer term approach for managing the safety and health of the resources sector in Queensland.</p>

### 3.6.3.3 Feedback regarding combined regulator model

As noted, comments from stakeholders on Option 4 (A combined WHS and resources safety and health regulator) were polarised.

A number of respondents highlighted the benefits of co-locating the resources safety and health regulator and the WHS regulator under the one ministerial portfolio. In this way, workplace safety issues could be centrally managed irrespective of the type of workplace. This view was most notably expressed by the P&G industry representatives who pointed to this option as a pathway to correcting the duplication and vagaries of current legislation and regulatory obligations. Representatives of the explosives industry also supported co-location with the WHS regulator.

On the other hand, a significant proportion of stakeholders were very strongly opposed to the notion of combining the resources regulator with the WHS regulator. Stakeholders argued that such a move would compromise the integrity and quality of services to the resources industry in Queensland. It was also argued that the combining of inspectorates would diminish the skills and expertise required in the inspection of mine sites and safety services would take a back seat to generalist WHS activities.

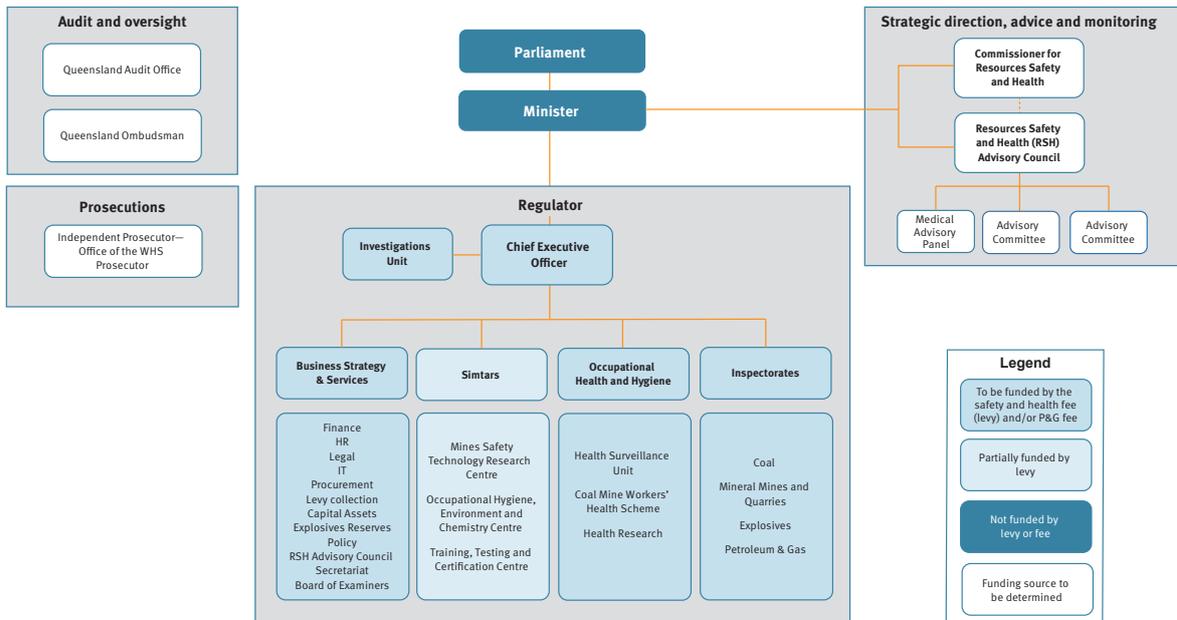
The PMO has been told by various stakeholders that the proposal to merge the safety inspectorates had been proposed several times in the recent past and has been strongly rejected by all stakeholders each time. The PMO has found no evidence that this matter has been considered in a substantive or meaningful way by executive government. The PMO does not accept vague opinions that the consolidation of mining and workplace safety services will result in the loss of skills or the diminution of safety outcomes. This model, in part or in full, prevails in every Australian jurisdiction other than Queensland and, while there appears to be anecdotal views about the efficacy of this model, there is simply no evidence to indicate that it has resulted in a decline in safety standards.

Notwithstanding this, the opposition to this proposal at present would suggest that there is little merit in considering the merging of resources safety and health and WHS as part of this programme of work.

# 4 Recommended resources safety and health regulator model

## 4.1 Proposed model

Resources Safety and Health Authority



## 4.2 Overview

The PMO recommends that the resources safety and health regulator be established as a standalone statutory authority, named the Resources Safety and Health Authority, as shown in the model above.

In making this recommendation, the PMO is mindful of the guiding principles underpinning the model development process, and highlighted in the consultation process. Any model for the regulator should embody the principles of accountability, effectiveness, efficiency, transparency, independence and public confidence.

The recommended model takes account of stakeholders' preferences, in particular in relation to the:

- retention of a Commissioner role
- importance of the advisory function provided by tripartite committee arrangements
- requirement for an avenue for independent prosecutions
- dedicated investigative services
- need for enhanced independent oversight of the performance of the regulator
- desirability of demonstrating that change has occurred within the system.

The PMO's recommended regulator model steers a path between Option 1 (A Mine Safety and Health Authority as proposed by the CWP Select Committee) and Option 2 (A standalone statutory entity) presented in Discussion Paper 1.

While a number of stakeholders expressed a preference for a standalone statutory entity model, a significant proportion of stakeholders were of the view that no structural failure had been proven, and therefore significant structural change was not necessary or warranted. With this in mind, the PMO's recommended regulator model could be effectively implemented in a range of scenarios. While the model has been conceived as a standalone statutory authority, the structure described could be implemented as a standalone entity, or within a department, or as part of a merged WHS and resources safety and health regulator, if so desired.

## 4.3 Form of the regulator model

The PMO recommends that the regulator be established as a standalone statutory authority.

When considering options, the PMO saw both benefits and drawbacks in a range of formulations. For example:

- **A statutory body** manages its own finances, providing a welcome degree of independence in regard to fiscal matters. Consequently though, such a body may not draw on the Consolidated Fund. This has two immediate impacts in terms of the PMO's consideration:
  1. It complicates the model proposed by the PMO which does not necessarily assume that all functions are funded by the safety and health fee. As a result there may be ongoing costs to be accounted for and this will inevitably impact on the fee required.
  2. Importantly, there is a risk that unanticipated costs to the regulator may result in the unacceptable situation in which activities of the regulator are curtailed due to a financial shortfall.
- **A statutory authority** is a distinct legal entity established under enabling legislation to provide independent oversight of specified functions. For reporting and finance purposes, it is considered part of its administering department. This means that (a) reporting on the authority's activities will form a part of the department's annual report, which appropriately maintains a direct link to the Minister for accountability purposes, and (b) should the authority require access to additional funds, it may call upon the Consolidated Fund—through its administering department—for such support. As an additional benefit, statutory authorities often engage in shared service arrangements with their administering departments, offering economies of scale in relation to support functions.

The PMO is of the view that the structure and responsibilities presented by a statutory authority offer a level of independence and flexibility that is well suited to the management of a safety and health regulator. The CWP Select Committee's report argues the need for a 'truly independent regulator' and the PMO concurs with the CWP Select Committee's view that a standalone statutory authority does indeed provide a satisfactory level of independence.

### Recommendation 1

The resources safety and health regulator be established as a statutory authority, named the Resources Safety and Health Authority.

## 4.4 Structure

### 4.4.1 Oversight and accountability

Under the PMO's recommended model, the role of the Parliament as the key scrutineer of the performance of the statutory authority is retained, with the Minister as ultimately accountable. This is in line with the Westminster model of government and the Public Interest Map policy, though contrary to the model proposed by the CWP Select Committee. The PMO sees no convincing argument to depart from this set of arrangements.

While alterations to structural arrangements have been suggested to increase independence and minimise the risk of regulatory capture, the fact cannot be avoided that the regulator acts on behalf of government, and that these actions must be accountable, through government, to the Parliament of the day. Further, the CWP Select Committee's suggestion that the system be overseen by a discrete parliamentary committee is a matter for the Parliament and cannot be provided for by government fiat.

The PMO believes that the existing parliamentary committee arrangements offer a satisfactory level of accountability and there is little to be gained by altering this long standing requirement. Under these arrangements a relevant parliamentary committee is responsible for assessing the public accounts of each department or agency within its portfolio in regard to integrity, economy, efficiency and effectiveness of the financial management and may initiate an inquiry into any matter it considers appropriate within its portfolio area.

It should be noted that the PMO makes no recommendation regarding the portfolio Minister or the administering department of the statutory authority and would anticipate that the status quo could prevail.

However, several stakeholders have indicated their preference for a Minister for mines or resources, free from the competing demands of additional interests. The PMO is clear that decisions on portfolio responsibilities are a matter for the Queensland Premier and the Governor of Queensland and fall outside the scope of this report.

### **Recommendation 2**

The Resources Safety and Health Authority be established under its own enabling legislation.

#### **4.4.2 The regulator**

Under the PMO's recommended model, the statutory authority would be headed by a CEO appointed by the Governor-in-Council, as is common for statutory office holders. Though ultimately a decision for the Minister, the PMO considers there is merit in the CEO role being a statutory position created by the enabling legislation. It is expected that the staff of the regulator will be public servants and will retain existing rights and responsibilities.

The CEO would be responsible to the Minister for the operational performance of the regulator and would report directly to the Minister, but would not be subject to direction by the Minister on operational matters. In addition, the CEO would have a place as an ex-officio member of the proposed Resources Safety and Health Advisory Council (the Advisory Council).

The PMO recognises that the CEO should have a degree of freedom in establishing the structure and staffing of the regulator, and suggests this recommended model as representing the functions to be discharged by the regulator.

Specifically, the regulator's functions should include:

- a business strategy and services function
- a research and testing function (Simtars)
- an occupational health and hygiene function
- inspectorate functions
- a dedicated investigations function.

### **Recommendation 3**

The Resources Safety and Health Authority be overseen by a Chief Executive Officer who is a statutory office holder under the enabling legislation. The Chief Executive Officer will report to the Minister responsible for resources safety and health, however, the Chief Executive Officer will not be subject to the direction of the Minister on operational matters.

#### **4.4.2.1 A business strategy and services function**

A business strategy and services function would provide the majority of the 'back office' functions of the entity, including information technology, finance (including fee collection), human resources, legal, procurement, capital assets, explosives reserves, policy, secretariat for the proposed Advisory Council, the Board of Examiners and others as deemed necessary. The policy function is important, especially in the light of the PMO's view that further legislative reform and strategic 'fine tuning' is warranted. A well resourced policy unit is pivotal to these actions.

Establishing the regulator as an independent statutory authority is conducive to enabling the statutory authority to access shared government services (such as information technology, administrative or other corporate support) where these are available.

#### **4.4.2.2 A research and testing function (Simtars)**

The PMO considers the current Simtars organisational structure necessary and sufficient and would therefore include a Mines Safety Technology Research Centre, an Occupational Hygiene, Environment and Chemistry Centre, and a Training, Testing and Certification Centre as part of the Resources Safety and Health Authority.

The CWP Select Committee's recommendation that Simtars ceases the provision of occupational hygiene activities on a fee for service basis was not supported by the PMO or the majority of stakeholders in consultation. Nevertheless, intensive examination of stakeholders' understanding of this recommendation has revealed suggestions worthy of further consideration. See section 5.2, dealing with the Simtars recommendation, for more detail.

The PMO has consistently acknowledged the value of quality research in progressing safety and health issues. In this regard, Simtars' development of a five-year strategic plan for research is welcomed. In the recommended model, the Advisory Council would have a role to play in shaping these priorities.

#### 4.4.2.3 An occupational health and hygiene function

It is suggested that the current functions of the Occupational Health and Hygiene Unit, comprising the Health Surveillance Unit and the administration of the Coal Mine Workers' Health Scheme, be enhanced as the CWP Select Committee proposed, to include a specific health research function.

The CWP Select Committee also recommended that the regulator be supported by an expert medical advisory panel. While this particular recommendation is outside the scope of the PMO's work, it is suggested that a medical advisory panel such as the existing Coal Mine Dust Lung Disease Collaborative Group could be usefully positioned as a subcommittee of the Advisory Council, to ensure medical knowledge and expertise is readily available to the Council. The PMO notes the considerable work that is ongoing to improve the operation of the Health Surveillance Unit and the functional effectiveness of the Coal Mine Workers' Health Scheme. Because this work is subject to separate monitoring and reporting, no further detail is supplied by the PMO at this stage.

#### 4.4.2.4 Inspectorate functions

The PMO recognises the need for a suitably resourced inspectorate to undertake regulatory activities, and notes the case for additional staff, particularly in regional centres, to effectively carry out inspectorate activity. There is clearly a need to ensure that inspectors are located close to their client base. This view was promoted by the CWP Select Committee in recommending that a Mine Safety and Health Authority should be located in Mackay. While this recommendation is not supported, it is acknowledged that staffing in regional centres needs to be regularly assessed to ensure that regional offices are suitably resourced.

It is the PMO's understanding that the current inspectorate staff members are well qualified and well regarded. There is no intention to amend the required competencies of inspectors or alter terms and conditions.

The structure proposed for the statutory authority retains the integrity of a single regulator for extractive resources and includes the coal mines, mineral mines and quarries, P&G, and explosives inspectorates.

#### 4.4.2.5 A dedicated investigations function

A regulatory and compliance regime must be underpinned by an effective route to sanctions. While the regulator has a clear role in assisting industry by providing advice and promoting best practice, transgressions of the legislation must be dealt with professionally and comprehensively.

It is the PMO's suggestion, based on its analysis and in response to stakeholder feedback, that a dedicated Investigations Unit be established, reporting directly to the CEO. This organisational positioning should ensure freedom from perceptions of regulatory capture, by separating the investigations function from the inspection function of the regulator. That said, the PMO is firmly of the view that investigation activity is a regulatory function and must sit with the regulator. There is no appetite for detaching investigative functions from regulatory services.

The staff of the Investigations Unit should be suitably trained and experienced in investigatory techniques, and have sufficient knowledge and understanding of the legal landscape to be able to present investigations with a reasonable expectation of successful prosecution where breaches of statutory duties have been proven.

It is envisaged that the Investigations Unit will work on site with inspectors, to ensure technical matters are covered appropriately, but that the investigators would not be subject to the direction of the inspectors.

Investigations would be presented to the CEO for consideration prior to (in the case of all but low level infractions) referral to the independent Office of the Work Health and Safety Prosecutor (WHS Prosecutor).

#### Recommendation 4

That a dedicated Investigations Unit be established within the Resources Safety and Health Authority, reporting directly to the Chief Executive Officer.

#### 4.4.3 Resources Safety and Health Advisory Council

The PMO's recommended model includes the establishment of a new Advisory Council. The Advisory Council would be a high level strategic advisory group. The primary role of the Advisory Council would be to identify and prioritise risk areas and provide advice to the Minister on the performance of the regulator.

The Advisory Council would be a tripartite body with representatives of industry, workers and government. Members of the Advisory Council would be appointed by the Governor-in-Council, on the recommendation of the Minister. The Advisory Council would be chaired by an independent Commissioner for Resources Safety and Health.

The Advisory Council would consist of eight members:

- one will be the chair appointed by the Minister
- two will be persons who, in the opinion of the Minister, are suitable to represent the interests of employers, appointed on the recommendation of the Minister after the Minister has consulted with the Queensland Resources Council and with other associations representing the interests of employers
- two will be persons who, in the opinion of the Minister, are suitable to represent the interests of employees appointed on the recommendation of the Minister after the Minister has consulted with associations representing the interests of employees
- two will be persons representing the interests of government
- one will be the CEO of the authority (ex-officio member).

It is anticipated that the Advisory Council will have a number of specified roles and responsibilities, including:

- **Providing advice to the Minister**—This would include advice on the performance of the regulator.
- **Developing a five-year strategic plan**—The strategic plan would identify the priority safety and health issues facing the resources sector and a meaningful plan of action to work on those priority areas, including targets for delivering measurable improvements in safety across the sector.
- **Establishing mechanisms to identify and prioritise critical safety and health risks across the resources sector**—These mechanisms would more accurately identify and quantify risks and may involve the establishment of an expert risk identification panel which operates as a subcommittee reporting to the Advisory Council. The structure and function of such a group could be a matter for the Advisory Council to decide. This approach is consistent with stakeholder feedback to implement measures to improve risk identification.
- **Establishing advisory committees**—The Advisory Council may establish subcommittees such as advisory committees. The advisory committees may be sector-based (e.g. coal mines or mineral mines and quarries), hazard-based (e.g. coal mine dust) or risk-based (e.g. risk management). The Advisory Council may set up whatever support mechanisms it needs to be able to provide timely and effective advice to the Minister. It is envisaged that these committees may be limited life committees although, in the short term, the existing CSMHAC and MSHAC would continue. While it is a matter for the Advisory Council, it is proposed that an Advisory Council member will be a member of any relevant subcommittees established by the Advisory Council. This will provide a further conduit of information from the subcommittees to the Advisory Council.
- **Receiving regular updates from key operational areas of the regulator**—This will allow the Advisory Council to assess progress against key performance indicators (set by the Advisory Council) in priority action areas, for example reports by the Chief Inspector of Coal Mines. This arrangement will also assist the Commissioner to monitor and report to the Minister and to the Parliament on the administration of provisions about safety and health under the Act and other mining legislation.

The Advisory Council and its subcommittees are to be independent of the operations of the regulator and will not be able to direct the regulator in the discharge of its regulatory functions. The Advisory Council will, however, be instrumental in working with the regulator to set strategic pathways for delivering improved safety outcomes for the resources sector in Queensland.

The constitution of the Advisory Council will be important. This will be a strategic body, not a technical one. The Advisory Council will rely upon technical advice from people with relevant expertise who are part of the advisory committees established by the Advisory Council for specific purposes. Accordingly, while Advisory Council members need relevant experience within the resources sector they do not need to be subject matter experts. Members should be nominated on the basis of their ability to drive change and deliver outcomes that will generate benefits to the whole Queensland community.

The CEO will be an ex-officio member of the Advisory Council i.e. a member by virtue of the position of CEO; the Advisory Council's constitution may define the voting rights of the CEO, noting that typically an ex-officio member does not have voting rights. The inclusion of the CEO will ensure that the Advisory Council remains fully apprised of the actions and activities of the regulator in delivering against the strategies outlined in the Advisory Council's strategic plan. It also provides a tangible connection between the advisory role of the Advisory Council and the operational performance of the regulator without interfering with the independence of regulatory action.

#### **Recommendation 5**

That an independent Resources Safety and Health Advisory Council be established to provide high level strategic advice to the Minister on the performance of the Resources Safety and Health Authority, including developing a five-year strategic plan for the authority.

#### **Recommendation 6**

The Resources Safety and Health Advisory Council will be chaired by the Commissioner for Resources Safety and Health and include members representing the interests of employers, employees and government, with the Chief Executive Officer of the Resources Safety and Health Authority as an ex-officio member.

#### **Recommendation 7**

The Resources Safety and Health Advisory Council may establish subcommittees, which may include existing advisory committees such as the Coal Mining Safety and Health Advisory Committee and the Mining Safety and Health Advisory Committee.

### **4.4.4 Commissioner for Resources Safety and Health**

The PMO's recommended model includes a role of Commissioner for Resources Safety and Health. This role is not precisely as envisaged by the CWP Select Committee and would be different to the existing Commissioner for Mine Safety and Health role.

The PMO proposes that the Commissioner for Resources Safety and Health would have the following responsibilities:

- contribute to the strategic direction of the regulator
- perform regular and routine (preferably annual) performance monitoring of the regulator
- provide advice to the Minister
- chair the Resources Safety and Health Advisory Council which has a strategic function
- prepare an annual report to the Minister for tabling in the Parliament.

As noted, a role of Commissioner was not included in the alternative regulator models presented in Discussion Paper 1. Through the consultation process, stakeholder comments pointed to the need to retain a source of independent advice to the Minister, to ensure improved oversight of regulatory performance, and to provide independence in relation to prosecutions.

The PMO believes that these functions can all be delivered, but cannot be accommodated in a single role. The PMO has, therefore, acknowledged the advisory and oversight functions of a Commissioner by providing for a Commissioner's role in the proposed Advisory Council, as its chair.

It is proposed that the Commissioner will be an independent statutory officer, not a public servant. The Commissioner will report to the Minister. The role of the Commissioner is significant under this proposed model. The Commissioner has an advisory role and support role for the Minister. The Commissioner does not have an operational role and will not have operational responsibilities. Specifically, the Commissioner will not have a role in undertaking, initiating or recommending prosecution action.

The reason for the Commissioner not having a prosecutorial function relates to concerns of both the PMO and stakeholders regarding the need for independent decision making in relation to prosecutions. The role as described by the CWP Select Committee is problematic insofar as the coupling of operational and oversight powers renders independence in relation to prosecutorial functions impossible. The involvement of the Commissioner in regulatory and compliance activities clearly militates against true independence in this regard. This view was reflected in a stakeholder comment which indicated that the Commissioner should not be involved in the day to day operations of the regulator. The PMO is of the view that prosecuting alleged breaches of legal duties is very much part of the day to day operations of a safety regulator. Upon completion of appropriate investigations of potentially serious breaches (undertaken by a proposed specialist Investigations Unit within the regulator), matters will be referred by the CEO of the authority to the independent Office of the WHS Prosecutor. Decisions to prosecute or not will rest with this specialist prosecutions group given the appropriate expertise of the group in legal matters.

It is proposed that the Commissioner would be appointed by the Governor-in-Council, on the recommendation of the Minister. The PMO is clear that a requirement should remain for the Commissioner to have an understanding of the resources sector and safety management practices. Additionally, and more importantly, the Commissioner should be a person with outstanding leadership capabilities and a proven ability as a change manager. Technical knowledge and expertise will be secondary to the ability to identify key issues, synergise discrete positions and marshal resources to effect improvements. These qualities are considered important in light of the demands of working with the Advisory Council to identify priorities (on advice from the specialist advisory committees) and developing strategies to drive safety improvements across the resources sector.

### Recommendation 8

An independent Commissioner for Resources Safety and Health be established as a statutory office holder, reporting to the Minister responsible for resources safety and health.

The responsibilities of the Commissioner for Resources Safety and Health will include contributing to the strategic direction of the regulator, performing regular and routine (preferably annual) performance monitoring of the regulator, providing advice to the Minister, chairing the Resources Safety and Health Advisory Council, and preparing an annual report to the Minister for tabling in Parliament. The Commissioner for Resources Safety and Health will not have a role in prosecutions under resources safety legislation.

#### 4.4.5 Prosecutions for resources safety offences

The PMO's recommended model includes utilising the independent Office of the WHS Prosecutor for prosecuting serious offences under resources safety legislation.<sup>12</sup>

The Office of the WHS Prosecutor is being established following an independent Best Practice Review of Workplace Health and Safety Queensland in 2017. The Office of the WHS Prosecutor will provide an independent statutory office for prosecutions under the *Work Health and Safety Act 2011*, the *Electrical Safety Act 2002* and the *Safety in Recreational Water Activities Act 2011*.

<sup>12</sup> Resources safety legislation means the *Coal Mining Safety and Health Act 1999*, the *Mining and Quarrying Safety and Health Act 1999*, the *Explosives Act 1999* and the *Petroleum and Gas (Production and Safety) Act 1994*.

The office will also have the power to conduct and defend proceedings under any other Act where a function is provided for under that Act, meaning that the Office of the WHS Prosecutor may be nominated as the independent prosecutor in the legislation to establish the resources safety and health regulator.

Under the proposed approach:

- The Office of the WHS Prosecutor would provide the primary mechanism for bringing forward prosecutions for serious offences under resources safety legislation.
- Prosecutions for less serious offences under resources safety legislation would continue to be brought by the resources safety and health regulator.
- The legislation would further enable persons to request the matter be referred to the Office of the WHS Prosecutor to consider whether to bring a prosecution.

#### Prosecutions for serious offences under resources safety legislation



The PMO believes that there are real and tangible benefits for resources safety and health in utilising the Office of the WHS Prosecutor. In particular this approach offers:

- **Independence**—The prosecution function is independent of existing agencies and structures.
- **Legal expertise**—The office will have legal experts experienced in prosecutorial functions.
- **Consistency**—A single point of reference for prosecutions will afford greater consistency in the interpretation and application of legal instruments.
- **Transparency**—A completely independent prosecutorial function with clearly documented legal arguments.
- **Efficiency**—A single point to determine the sufficiency of evidence and suitability of a matter to continue to prosecution.
- **Effectiveness**—Focused expertise and consistent standards will be reflected in improved prosecution outcomes.

Under current coal mining and mining and quarrying legislation, the Chief Executive or the Commissioner may bring a prosecution, while an inspector, an industry safety and health representative, a district workers' representative or a site senior executive may recommend to the Commissioner that a prosecution be brought. Under the explosives and P&G legislation the Chief Executive and the Commissioner may bring a prosecution. There is no requirement that those commencing prosecutions have any legal experience.

The PMO prefers the WHS Prosecutor model, which calls on the application of specific expertise in progressing legal action, over the current arrangements, where the prospect of success in prosecution appears low.

Additional benefits of the WHS Prosecutor model include transparency and accessibility.

In terms of transparency, the WHS Prosecutor must publish general guidelines in relation to prosecution of offences under the relevant Acts. The WHS Prosecutor must also provide an annual report to the Minister on the performance of the WHS Prosecutor's functions during that year. The Minister must table a copy of the report in the Parliament. The annual report must include a copy of each guideline made by the WHS Prosecutor which was in force that year.

In relation to accessibility, and in a move that the PMO considers an improvement to current arrangements, any person may make a written submission to the WHS Prosecutor to bring a prosecution under resources safety legislation. To make a submission, a person must reasonably consider that an act or omission has occurred which constitutes an offence under the relevant Act. The WHS Prosecutor must respond to the submission in writing within three months. The response must include:

- whether the investigation is complete
- if the investigation is completed, whether a prosecution has or will be brought
- if a prosecution will not be brought, the reasons why.

If the response advises that a prosecution will not be brought, a person will have the right to request the WHS Prosecutor refer the matter to the Office of the Director of Public Prosecutions (ODPP) for consideration. The ODPP will have one month to advise in writing whether a prosecution should be brought.

This process allows for concerned parties to explore three avenues of action. First through the resources safety and health regulator. If no action is taken by the regulator, a person may write to the independent WHS Prosecutor. If no action is found necessary by the WHS Prosecutor, a person may request onward referral to the ODPP and the ODPP must respond. This triple lock approach should provide assurance of a thorough and independent investigation and prosecution function, free from actual or perceived regulatory capture.

This approach proposed for the resources safety and health regulator is similar to that which operates for prosecutions under the WHS Act, the Electrical Safety Act and the Safety in Recreational Water Activities Act.

### Recommendation 9

The Office of the Work Health and Safety Prosecutor is utilised for prosecution of serious offences under resources safety legislation.

## 4.5 External assurance

Outside of the regulator model, the PMO suggests additional and independent assurance and oversight may be provided through:

- **Queensland Audit Office (QAO)**—The QAO will undertake annual financial audits of the regulator, similar to other public sector entities. In addition, the QAO may also be utilised to conduct performance audits of the regulator. This would include identifying whether organisational objectives are being achieved economically, efficiently and effectively. It is acknowledged that the QAO sets its own timetable for assessments and that this function provides for a 'point in time' audit of performance. This function would supplement the proposed annual performance monitoring undertaken by the Commissioner.
- **Queensland Ombudsman**—The Queensland Ombudsman would continue to provide an independent avenue for investigation of concerns or complaints relating to the regulator.

## 4.6 Costs to implement recommended model

As noted, costings were prepared by BDO on the regulator model options presented in Discussion Paper 1 to assist stakeholders consider the options.

The recommended model, the Resources Safety and Health Authority, is a variation to the options presented in Discussion Paper 1 which incorporates feedback from stakeholders. As such, the model has not been fully costed, however it is anticipated that the costs would be similar to costings prepared for the regulator model presented in Option 2 of Discussion Paper 1 (A standalone statutory entity).

An indicative cost estimate of the recommended model has been prepared below, however further costings would need to be undertaken to determine the final cost of this model. A comparison is also presented against the regulator remaining as part of a department or agency (which could include the status quo).

	Regulator established as the Resources Safety and Health Authority* (statutory authority) (\$ million)	Regulator located within a department or agency (\$ million)
Set-up and one-off costs	2.65	0.40
<b>Ongoing costs:</b>		
RSH division costs	60.96	60.96
CWP-related additional costs	4.00	4.00
Additional corporate, business strategy and services costs	1.68**	N/A
Commissioner for Resources Safety and Health	0.63***	0.63***
Resources Safety and Health Advisory Council, advisory committees and secretariat	0.20^	0.20^
Utilising the Office of the WHS Prosecutor	To be determined (prosecution costs are currently paid under the RSH division costs)	To be determined (prosecution costs are currently paid under the RSH division costs)
<b>Estimated cost in Year 1</b>	<b>70.12</b>	<b>66.19</b>
<b>Estimated ongoing annual cost</b>	<b>67.47</b>	<b>65.79</b>

\* These costs are estimates only and further work is required to determine final costings of the statutory authority.

\*\* The corporate costs have been costed on the basis that corporate support is provided within the statutory authority. Using a shared services model may reduce this cost.

\*\*\* The cost estimated for the Commissioner is based on the FY17–18 budget of the Office of the Commissioner for Mine Safety and Health.

^ Further work would need to be undertaken to identify the final costs once the makeup of the Advisory Council, advisory committees and secretariat is determined.

## 4.7 Proposed implementation

The PMO's recommended model would require enactment of enabling legislation to establish the statutory authority and amendments to the resources safety Acts and regulations.

Importantly, further consultation on the proposed approach will be necessary given that the recommended model is a variation of the options proposed in Discussion Paper 1.

In the meantime, it may be considered prudent to embark on necessary organisational change in tandem with the development of legislative amendments. For example, work to determine the optimum staffing levels for regional offices is not reliant on legislative change and may be undertaken at the regulator's instigation. Similarly, determinations on any desirable modifications to inspection regimes, which may or may not require a reorganisation of resources (including by actioning recommendations made by the CWP Select Committee that fall outside the scope of the PMO's considerations) could be progressed in earnest without impediment to the amendment of legislation. These changes could, and in the opinion of the PMO should, be progressed within the existing resources safety and health regulator in order to deliver recommended and required changes in a timely manner.

## 4.8 Considering the public interest test

In Discussion Paper 1, the PMO noted that 'a preferred regulator model must be able to demonstrate that it is capable of achieving an appropriate or acceptable level of accountability, effectiveness, efficiency, transparency, independence and public confidence'.<sup>13</sup> These principles are also embodied in the Public Interest Map policy which must be met for the establishment of non-departmental bodies. Stakeholders were asked to indicate to what extent the models presented by the PMO achieved these outcomes.

Based on the feedback received from Discussion Paper 1, Option 2 (A standalone statutory entity with a different governance structure from that proposed by the CWP Select Committee) was rated highest by stakeholders. However, many respondents suggested a number of measures that would, in their view, improve the governance framework. For example, most stakeholders expressed the view that a Commissioner role should be included in the model. The analysis of the responses, including an assessment of stakeholder feedback and further consultation with stakeholders, informed the PMO's construction of a new model (as proposed in this Report) that sits between Option 2 (A standalone statutory entity) and Option 1 (A Mine Safety and Health Authority as proposed by the CWP Select Committee).

Given that the recommended model is a departure from the model proposed by the PMO in Discussion Paper 1, it is prudent to reassess the new model against the principles outlined above to ensure that it meets the required standards as prescribed in the Public Interest Map policy. More detailed discussion of these principles follows.

### 4.8.1 Independence

Independence is a key measure and the centrepiece of the CWP Select Committee's findings. The CWP Select Committee recommended that independence would be improved through the establishment of the regulator as a statutory authority. The regulator model proposed by the PMO in this report aligns with the CWP Select Committee's recommendation. In responding to Discussion Paper 1, stakeholders rated this element (independence) of Option 2 (A standalone statutory entity) model highly. Most stakeholders agreed that the establishment of the regulator as a statutory entity would minimise the perception of regulatory and political capture. The PMO submits that the recommendation to set up the regulator as a statutory authority achieves the required level of independence.

### 4.8.2 Accountability

The PMO's recommended model simplifies and clarifies reporting lines. The Minister is clearly accountable to the Parliament and the CEO is clearly accountable to the Queensland Government for the effective performance of the regulator responsible for resources safety and health. The recommended model has clear lines of accountability and responsibilities that are well defined. This is consistent with the principles

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<sup>13</sup> PMO, Discussion Paper 1: Options for Resources Safety and Health Regulator Models in Queensland. March 2018, p. 11.

of responsible government applied in Queensland. The PMO is of the view that the required standard of accountability is provided with the recommended model.

### 4.8.3 Effectiveness

The organisational framework needs to be able to support the objectives of the legislation to protect the safety and health of workers in the resources sector. The model recommended by the PMO establishes a strategic Advisory Council with a pre-eminent role to identify and prioritise risk areas and set measurable targets. The regulator is responsible for implementing strategies to achieve those targets and is accountable to the Minister for its performance. This structure provides the mechanism for ensuring that the various parts of the regulatory landscape have clear lines of sight on their roles and responsibilities and, in so doing, are better placed to be effective in the delivery of regulatory services. The PMO's recommended regulator model meets the test of effectiveness.

### 4.8.4 Efficiency

The organisational structure presented in the PMO's recommended model offers a simple and logical hierarchy where overlap and duplication have been removed. Clarification of roles and responsibilities improves efficiency. Likewise, the role of an Advisory Council supported by expert advisory committees offers greater flexibility and improved accountability in responding to emerging issues. The proposal to leverage shared services, access the WHS Prosecutor and create a standalone investigations function within the resources safety and health regulator are further examples of efficiency improvements and support the PMO's view that the recommended model achieves the standards of efficiency required.

### 4.8.5 Transparency and public confidence

The PMO's recommended model delivers on transparency and public confidence by ensuring that the monitoring and review of the agency's performance are undertaken by an independent Commissioner reporting through a new and independent Advisory Council. Further to this, utilising the independent prosecution function places all prosecution action at arm's length from the regulator. This gives stakeholders and the public a greater level of confidence that alleged breaches of the legislation are being dealt with by specialist prosecutors who are not part of the regulator. The PMO's model provides elements and structures which enhance transparency in decision making, and is an opportunity to restore faith in the regulator's compliance and enforcement actions.

The PMO has, in accordance with its own criteria, assessed the recommended model against the governance elements of independence, accountability, effectiveness, efficiency, transparency and public confidence. The PMO submits that the proposed model achieves the required standards of governance. This, however, will be for others to judge.

## 5 Other matters relevant to the regulator

### 5.1 Location of the regulator in Mackay

#### 5.1.1 CWP Select Committee recommendation

The CWP Select Committee specified in its report no. 2, that:

**Recommendation 5**

*The Mine Safety and Health Authority should be established in Mackay, ensuring the Commissioner, senior management, Mines Inspectorate, Coal Workers' Health Scheme, and mobile units are all based in central Queensland.<sup>14</sup>*

This recommendation was later repeated in the CWP Select Committee's exposure draft Mine Safety and Health Authority Bill 2017, as part of its report no. 3.

#### 5.1.2 The government response

The government noted its support to giving consideration to the regional footprint of the regulator and further consideration of the case for basing the regulator in Mackay.<sup>15</sup> In particular, the government indicated that a business case would be required in demonstrating the sustainability of locating the regulator in Mackay.

#### 5.1.3 PMO action

The PMO produced Focus Paper 2 which examined the proposed location of the regulator in Mackay and its potential impacts. This paper was provided directly to stakeholders and published online. A specific question was included in the consultation proforma for Discussion Paper 1, seeking feedback on whether the CWP Select Committee's proposal was supported.

The key points made in the focus paper related to the:

- scope of the recommendation and issues arising
- current arrangements for service delivery across the state
- business units to be relocated to Mackay, and those not specified for the move
- number of staff affected
- number and types of specialist staff functions to be relocated
- labour market implications of the move, with particular reference to specialist functions
- availability of suitable accommodation in the Mackay area.

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<sup>14</sup> Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, Black Lung White Lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, Report No.2, May 2017, p. 7.

<sup>15</sup> Queensland Government, Response to Coal Workers' Pneumoconiosis Select Committee report no. 2—Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, September 2017, p. 18.

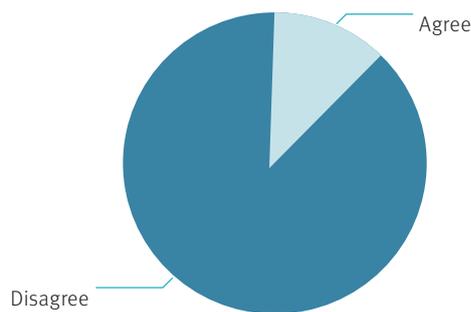
### 5.1.4 Consultation

The discussion paper and focus paper were published on 20 March 2018, the consultation period closed on 27 April 2018, though feedback was accepted until 3 May 2018.

Sixteen consultees responded to the question directly. One response was problematic in that it did not give a definitive position. In the interests of reflecting stakeholder feedback as faithfully as possible, the PMO assigned a 'yes' vote to this response, on the basis of conversations held with the stakeholder.

On this basis, two consultees (12.5%) were in favour and 14 consultees (87.5%) were against the CWP Select Committee's recommendation that the regulator should be located in Mackay.

#### Regulator should be located in Mackay



### 5.1.5 PMO advice

The PMO finds the case for relocating the regulator to Mackay has not been made by the CWP Select Committee.

The CWP Select Committee's recommendation was not entirely clear: whilst appearing somewhat coal-centric in its design, the inclusion of non-coal representatives on the proposed board complicates the intended scope of the regulator. The PMO has, in keeping with the government's stated intention, determined that the regulator will continue to cover the sector as a whole (i.e. coal mines, mineral mines and quarries, explosives, and P&G).

On that basis, it should be noted that, while around half of Queensland's coal mines are located in the central part of the Bowen Basin, the state's mineral mines and quarries (comprising more than 1000 sites) are distributed more broadly across the state. Petroleum and gas reserves are also concentrated predominately in southern and south-western Queensland, within the Surat and Cooper-Eromanga basins.

Locating the regulator in Mackay is therefore sub-optimal for significant components of Queensland's resource sector and would lead to increased time and cost associated with travel—for all inspectorates—as compared to current arrangements. Additional costs, both in financial and human terms, appear high, with no clear benefits likely to be accrued.

The PMO finds that relocating the regulator would have no impact in terms of accountability, transparency, independence or public confidence, that is, any improvements in these areas would be unlikely to be attributed to the geographic location of the regulator. Further, the PMO finds that this suggested relocation could present negative impacts in terms of efficiency and effectiveness.

Importantly, there is minimal stakeholder appetite to make the move.

For these reasons, the PMO proposes that the recommendation should not be implemented.

The PMO notes the advantages of the existing model and the particular benefits derived from this regionally specific knowledge base. The PMO further suggests that work is undertaken to determine whether the current resourcing of regional offices provides optimal coverage for inspectorate activities.

## 5.2 Abolishing the Simtars' fee for service for occupational hygiene

### 5.2.1 CWP Select Committee recommendation

The CWP Select Committee specified in its report no. 2 that:

**Recommendation 9**

*The occupational hygiene services currently offered by SIMTARS on a fee for service basis should be discontinued. The officers who currently provide those services should be redeployed to the Mine Safety and Health Authority to undertake research and/or occupational hygiene inspection activities within the inspectorates.<sup>16</sup>*

### 5.2.2 The government response

The government's response to the CWP Select Committee report stated the government's position that:

*... the focus of Safety in Mines Testing and Research Station (Simtars) work should be on providing better safety and health outcomes in Queensland's resources sectors and that this may involve increased focus on research around occupational health issues. However, further analysis is needed regarding the funding sources for Simtars before a decision can be made regarding fee-for-service work.<sup>17</sup>*

The government's response further noted the issues to be considered in relation to this recommendation. Specifically, that:

*Discontinuing fee-for-service occupational hygiene work requires further analysis to determine an implementation plan that avoids detriment to stakeholders and ensures that the community service obligation currently fulfilled by Simtars continue. It is also important that structural arrangements ensure appropriate delineation between regulatory and research functions (e.g. in relation to dust monitoring or coal mine worker health).<sup>18</sup>*

### 5.2.3 PMO action

The PMO produced Focus Paper 3 which examined the proposal and its potential impacts. This paper was provided directly to stakeholders and published online. A specific question was included in the consultation proforma for Discussion Paper 1, seeking feedback on whether the CWP Select Committee's proposal was supported.

The focus paper examined the:

- current funding arrangements for, and activities undertaken by, Simtars
- CWP Select Committee's comments on the 'appropriateness' of Simtars activity in fee for service activities in relation to occupational hygiene
- capacity and capability of the market to provide this service adequately if Simtars were to exit
- likely impact on Simtars—in terms of finance and staff resource—if this activity ceased
- PMO's understanding of the intent underlying the recommendation.

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<sup>16</sup> Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, Black Lung White Lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, Report No.2, May 2017, p. 7.

<sup>17</sup> Queensland Government, Response to Coal Workers' Pneumoconiosis Select Committee report no. 2—Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, September 2017, p. 18–19.

<sup>18</sup> As above, p. 20.

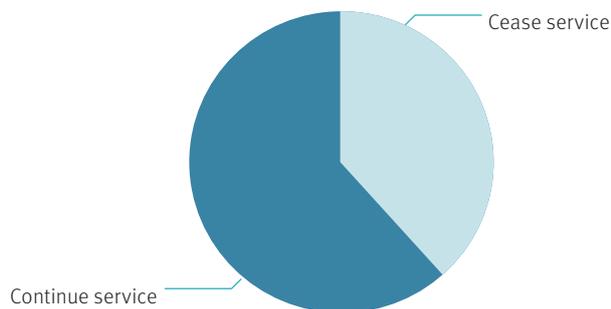
## 5.2.4 Consultation

The paper was published on 20 March 2018, with the consultation period closing on 27 April 2018, though feedback was accepted until 3 May 2018.

Thirteen respondents answered the question, with five (38%) supporting the CWP Select Committee's recommendation that Simtars should cease to provide occupational hygiene activities on a fee for service basis. Eight respondents (62%) disagreed.

Of those expressing support for the CWP Select Committee's recommendation, it should be noted that one provided a response that seemed to argue both for and against the recommendation and two (of five) were contingent on the supposition that Simtars take on the role of state-wide auditor instead. This is an important point and is examined further below

### Simtars fee for service in occupational hygiene



## 5.2.5 Conflicting interpretations of the recommendation

Notably, a number of stakeholders have asserted that the CWP Select Committee's recommendation 9 has been misinterpreted by the PMO. Those stakeholders suggest that the recommendation should be taken to mean that the fee for service activity should cease, and that Simtars should then assume a role as state-wide monitor or auditor of results submitted to the regulator.

The PMO finds no evidence in the CWP Select Committee's report to support this view. Indeed, the contrary would seem to be true, with the CWP Select Committee specifically noting:

*A number of submitters considered Simtars might appropriately take charge of all monitoring in the state, noting that it already provides training to other service providers on best practice in dust monitoring. However, the committee also considers that our state's research body on mining safety and health should be more appropriately focused on the identification and dissemination of research and technological breakthroughs, to support a responsive and cutting edge industry.<sup>19</sup>*

This passage indicates that the CWP Select Committee considered and dismissed the notion of Simtars as monitor.

The PMO considers that an understandable conflation appears to have occurred in the minds of stakeholders between the intent of recommendation 34 (that inspectors carry out auditing) and recommendation 9 (that Simtars cease to provide fee for service activity in this area).

In recommendation 34, the CWP Select Committee cites stakeholder commentary had 'emphasised the need for mining inspectors to carry out some degree of quality assurance of dust results'.<sup>20</sup> The CWP Select Committee goes on to suggest accompanied inspections—always referring to inspectors, rather than Simtars staff—could prove useful. It is possible that the CWP Select Committee's intent was for those staff redeployed to the regulator as a result of recommendation 9 to be involved in accompanied inspections envisioned at recommendation 34. However, there is no explicit indication of that intent, nor any indication of how such an arrangement would be operationalised. Additionally, as there is no suggestion that

<sup>19</sup> Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, Black Lung White Lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, Report No.2, May 2017, p. 13.

<sup>20</sup> As above, p. 160.

recommendation 34 is contingent on recommendation 9 being implemented, there is no impediment that the PMO can see to recommendation 34 being implemented in the absence of recommendation 9.

### 5.2.6 PMO advice

The PMO does not support the CWP Select Committee's recommendation 9 at this stage. Furthermore, a significant majority of those responding to this issue in consultation did not support the recommendation. The following commentary is provided in relation to recommendation 9:

In relation to the first part of the recommendation:

- (a) Occupational hygiene services currently offered by SIMTARS on a fee for service basis should be discontinued*

The PMO considers that Simtars' withdrawal from the area of respirable dust monitoring at this stage has potential consequences that may not have been considered by the CWP Select Committee. The prospect of reduced, or lower quality, monitoring in this area appears contrary to the CWP Select Committee's intent, and the PMO recommends that service delivery arrangements in respect of respirable dust monitoring continue in the immediate term.

That said, the PMO notes strong and persuasive feedback from some stakeholders that Simtars is well placed to provide a quality assurance function within the dust monitoring market. The PMO considers there is merit in moving to such a position in the longer term—noting that market capacity will be a key determinant in Simtars' exit from this activity. Stakeholders were clear that Simtars should be allowed to retain the ability to charge for the analysis of samples, thus providing for some continuity of the fee for service arrangements.

In relation to the second part of the recommendation:

- (b) The officers who currently provide those services should be redeployed to the Mine Safety and Health Authority to undertake research and/or occupational hygiene inspection activities within the inspectorates.*

The PMO is sympathetic to the notion that Simtars' research is a critical function of the regulator. The PMO is reassured by recent action by Simtars to enhance the transparency of this aspect of work, in particular the establishment of a research steering committee and the intention to engage stakeholders in the development of a five-year research strategy.

The PMO encourages a continuation of efforts to engage stakeholders in the development of a relevant research strategy for the organisation, and suggests the proposed Advisory Council, or a subcommittee thereof, could serve a useful role in providing advice on strategic priorities.

## 5.3 Establishing mobile health units

### 5.3.1 CWP Select Committee recommendations

The CWP Select Committee specified in report no. 2 that:

**Recommendation 47**

*The Coal Workers' Health Scheme should obtain and utilise at least one Coal Workers' Health Mobile Unit, similar to those used by NIOSH [National Institute of Occupational Safety and Health], capable of delivering chest x-ray, spirometry, and general health assessments for coal workers and former coal workers in regional Queensland.*

**Recommendation 48**

*The Coal Workers' Health Mobile Units should be properly staffed and maintained under the Coal Workers' Health Scheme, and operate out of the Scheme's headquarters in Mackay.*

**Recommendation 49**

*The cost of health assessments undertaken at the Coal Workers' Health Mobile Units should be met by the Coal Workers' Health Scheme.<sup>21</sup>*

As an addendum to recommendation 47, the CWP Select Committee 'affirm[s] that it considers that high-resolution CT scanning equipment should be included in the mix of equipment engaged in these units.'<sup>22</sup>

### 5.3.2 The government response

In the government's response to the CWP Select Committee's report, in-principle support was given to the proposal to utilise mobile health units. The government specifically recognised 'the importance of ensuring health assessment services are accessible to all coal mine workers'<sup>23</sup> and noted that further consideration would need to be given to 'ensure the quality, efficiency and effectiveness of the service.'<sup>24</sup>

### 5.3.3 PMO action

The PMO produced Focus Paper 5 which examined the proposal to operate mobile health units and its potential impacts. This paper was provided directly to stakeholders and published online, inviting feedback.

The focus paper examined:

- the relevant background information on the requirement for medical assessments
- the scope of the recommendation and issues arising
- the current arrangements for service delivery across the state, including challenges being addressed by other work programmes
- how mobile health services operate in other jurisdictions
- the challenges to be addressed in providing medical assessments in a mobile health unit
- the potential costs.

The focus paper then considered the proposal against the key criteria of accountability, effectiveness, efficiency, transparency, independence and public confidence, and presented the PMO's assessment of the potential value add of adopting this approach to delivering medical assessments for the purposes of the Coal Mining Safety and Health Regulation 2017.

21 Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, Black Lung White Lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, Report No.2, May 2017, p. 21–22.

22 Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, Report No. 5, A Mine Safety and Health Authority for Queensland: A further response, October 2017, p. 15.

23 Queensland Government, Response to Coal Workers' Pneumoconiosis Select Committee report no. 2—Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, September 2017, p. 27.

24 As above.

### 5.3.4 Consultation

Focus Paper 5 was published on 30 April 2018, and the consultation period closed on 1 June 2018.

Only three stakeholders chose to make comments on the paper. One stakeholder strongly supported the PMO's position, noting that the Monash Review discussed the provision of mobile health units but did not recommend such an approach in Queensland. Furthermore, the stakeholder suggested that the aim of introducing any changes to the Coal Mine Workers' Health Scheme should be to improve the quality of the screening process and ensure effective risk mitigation. Mobile health units would not contribute significantly to this outcome and would even direct funding away from more effective areas.

On the other hand, one stakeholder supported the acquisition of mobile health units and another appeared to support the recommendation, though provided no definitive position. The PMO has assumed that this feedback is in favour of the recommendation, on the basis of interactions with the stakeholder.

### 5.3.5 PMO advice

The PMO finds the case for the provision of mobile health units has not been made by the CWP Select Committee.

Providing mobile health units would ensure that health assessments are readily available to coal mine workers onsite. This has attractions in terms of convenience. However, the recommendation presents a number of challenges to be weighed against this advantage.

These challenges include that:

- There is no evidence to suggest that access to medical assessments is an issue. Indeed, there is significant evidence to suggest assessments are readily available state-wide.
- The costs associated with the introduction and maintenance of a sufficient number of mobile health units is significant.
- There will remain a need to provide (and fund) an alternative arrangement for new entrants and those workers not rostered on site when the mobile health unit visits.
- Feedback from radiography providers suggests that staff attraction and retention may be a difficulty. Consequently, remuneration above the median rate may be required.
- There is a risk that transporting sensitive diagnostic equipment long distances over rough terrain will impair the function of the devices.
- The potential for a virtual monopoly of this service would remove from workers the existing element of choice over which medical practitioner to consult.
- The provision of a mobile service will not, in and of itself, improve the technical competence of those undertaking the assessments.

The PMO finds that providing mobile health units will have no attributable impact on accountability, transparency, independence or public confidence, which is to say that any improvements in these areas would not relate to the mobility of the service. In addition, the PMO finds that effectiveness and efficiency may be compromised as a result of this approach.

As recommendation 47 is not supported by the PMO, or the majority of stakeholders, further commentary on recommendations 48 and 49 is not provided.

## 6 Consideration of funding model options for the regulator

### 6.1 CWP Select Committee recommendations

In undertaking its inquiry, the CWP Select Committee considered the funding source for the regulatory framework for mine safety and health in Queensland. The CWP Select Committee acknowledged the importance of ensuring that the operations of the regulator are appropriately funded. With this in mind the CWP Select Committee examined the suitability of the current safety and health fee (also known as the levy) under Part 2A of Chapter 2 of the Coal Mining Safety and Health Regulation 2001.<sup>25</sup>

In its report, the CWP Select Committee made the following findings regarding funding the regulator:

- the safety and health fee is not an appropriate method of funding a truly independent mine safety and health regulator with a fully functional mines inspectorate
- the funding mechanism for these vital government functions should not be so closely tied to the number of workers employed in the mining industry at any given time.<sup>26</sup>

The CWP Select Committee noted that existing safety and health fee (levy) funds have been insufficient to support the government's response to the re-identification of CWP to date, with levy funds having to be supplemented with additional funding from government.<sup>27</sup>

The CWP Select Committee made the following recommendations regarding funding the regulator:

#### **Recommendation 16**

*The safety and health fee currently provided for by part 2A of chapter 2 of the Coal Mining Safety and Health Regulation 2001 should be abolished.*

#### **Recommendation 17**

*The Mine Safety and Health Authority should be funded by a dedicated proportion of coal and mineral royalties paid to the Queensland Government, to be determined in consultation with industry and unions after an assessment of the operating costs of the Authority is undertaken. The dedicated proportion of the royalties should be fixed by regulation and reviewed periodically by the parliamentary committee responsible for the Mine Safety and Health Authority.*

#### **Recommendation 18**

*Any surplus income derived from the dedicated proportion of royalties that is not allocated to, or expended from, the annual budget of the Authority should be invested with the Queensland Investment Corporation for the future research and operational needs of the Authority.*

The government's response to the CWP Select Committee report acknowledged that reform of the funding model for the regulator is necessary and recognised the need for a revenue stream that better meets the needs of a dynamic operating environment. The government also recognised the need for a funding model that will maintain stable funding to deliver a best practice safety and health regulatory framework in Queensland.<sup>28</sup> The government proposed that the existing safety and health fee should continue until an alternative funding model is determined and implemented.<sup>29</sup>

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<sup>25</sup> The Coal Mining Safety and Health Regulation 2001 was remade as the Coal Mining Safety and Health Regulation 2017 and commenced on 1 September 2017.

<sup>26</sup> Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, Black Lung White Lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, Report No.2, May 2017, pp. 75–76.

<sup>27</sup> As above p. 76.

<sup>28</sup> Queensland Government, Response to Coal Workers' Pneumoconiosis Select Committee report no. 2—Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, September 2017, p. 21.

<sup>29</sup> As above, p. 22.

The government response signalled that further consultation was required regarding the recommendation to abolish the safety and health fee; and that independent advice was required regarding funding the regulator from a dedicated proportion of royalties.<sup>30</sup> The PMO has been tasked with consulting on these recommendations and providing advice to the Minister on a sustainable and effective funding model for the regulator.

The recommendations of the CWP Select Committee relate to the safety and health fee provided for under Part 2A of Chapter 2 of the Coal Mining Safety and Health Regulation 2001. Currently, the safety and health fee applies to all operations regulated under the Coal Mining Safety and Health Regulation 2017, the Mining and Quarrying Safety and Health Regulation 2017 and the Explosives Regulation 2017.<sup>31</sup>

Noting the CWP Select Committee's finding regarding funding a truly independent mine safety and health regulator with a fully functional mines inspectorate, the PMO considered the safety and health fee as it applies to regulatory activity across the coal mining, mineral mines and quarries, and explosives industries

The PMO considered the recommendations relating to funding in the context of the CWP Select Committee's intention to deliver an improved regulatory framework. Specifically, that the structural reform proposed by the CWP Select Committee is to be underpinned by a funding source that is appropriate to the needs of delivering regulatory services to the Queensland resources sector. Importantly, an industry sourced funding approach is not at question. What is at question is whether or not royalty revenue from industry represents an appropriate source of funding for regulatory services.

The PMO considered recommendations 16, 17 and 18 through two papers released for stakeholder feedback. Recommendations 17 and 18 were examined through Focus Paper 4 which examined the proposal to fund the regulator from mining royalties. Recommendation 16 was subsequently examined through Discussion Paper 2 which presented funding model options for the resources safety and health regulator in Queensland.

## 6.2 CWP Select Committee proposal to fund the regulator from royalties

In its report no. 2, the CWP Select Committee stated that utilising a designated proportion of coal and mineral royalties would be a more appropriate and robust funding mechanism than the current levy, to support the full funding of safety and health activities within the mining industry.<sup>32</sup>

The government response to the CWP Select Committee report noted that the proposal to use coal and mineral royalties needs to be investigated fully to determine whether the proposal is appropriate or whether there is a more effective funding mechanism.<sup>33</sup>

In considering the CWP Select Committee's recommendations, the PMO examined the rationale for royalties and whether or not funding resources safety and health regulation is consistent with this rationale.

The purpose of royalties is to provide a return to the people of Queensland from the extraction and sale of a non-renewable resource. Mineral resources are considered to be a valuable endowment to the community, with state governments conferring the right to extract and sell these mineral resources on private entities and earning a return to the community for doing so via royalties.

The PMO's analysis has found that utilising royalties does not align with this primary purpose. The distribution of funding from royalties is intended to benefit all Queenslanders rather than a discrete cohort. If regulatory costs were to be paid for from royalty revenue this would be contrary to this principle and effectively amount to a transfer of income from the Queensland Government to the mining industry. Further, paying for mine safety and health regulatory activities from coal and mineral royalties would necessarily result in a reduction in the overall funding available to deliver government services elsewhere in the Queensland community (e.g. hospitals, roads or schools).

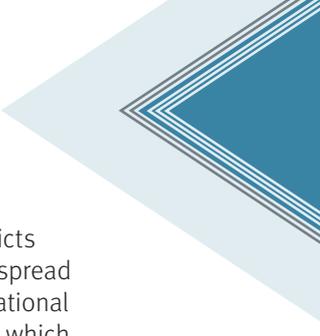
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30 Queensland Government, Response to Coal Workers' Pneumoconiosis Select Committee report no. 2—Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, September 2017, p. 22.

31 See Part 2A of Chapter 2 of the Coal Mining Safety and Health Regulation 2017, Part 2A of Chapter 2 of the Mining and Quarrying Safety and Health Regulation 2017 and Part 12 of the Explosives Regulation 2017.

32 Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, Black Lung White Lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, Report No.2, May 2017, p. 8.

33 Queensland Government, Response to Coal Workers' Pneumoconiosis Select Committee report no. 2—Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, September 2017, p. 23.



The PMO also found that funding regulatory activities for mine safety and health from royalties conflicts with best practice in cost recovery. It is often the case that the costs of government intervention are spread widely due to the indirect and dispersed nature of the benefits. For example, public goods such as national defence, public healthcare and some transport infrastructure. There are, however, many instances in which those who benefit from a government intervention can be readily identified—such as instances in which regulatory services are provided to a discrete industry. In these circumstances, government can recover costs directly through user charges and industry levies. This is known as the ‘beneficiary pays’ principle. It is considered equitable for those who benefit from a narrowly focused government intervention or service to bear the costs of that intervention or service. The beneficiary principle is reflected in current Queensland Government policy.<sup>34</sup> The PMO is of the view that it is reasonable to expect that the costs of safety and health regulatory services should be met by the industry sector that generates the activity.

In relation to recommendation 17, the PMO made the following findings in Focus Paper 4:

- the use of royalties for funding regulatory services for a discrete work process is out of step with the purpose and objectives of the payment of royalties to the Queensland community
- the use of a royalties based funding approach does not conform to best practice principles regarding the recovery of costs by the government for the delivery of regulatory services.

Based on this analysis, the PMO does not support the CWP Select Committee’s proposal that the regulator be funded by a dedicated proportion of royalties. Royalty revenue should not be pursued as a viable funding option for mine safety and health regulatory activities.

Three stakeholders made written submissions regarding Focus Paper 4. All three stakeholders supported the PMO’s position that a dedicated proportion of coal and mineral royalties should not be utilised to fund the regulator. Discussions with other stakeholders through the course of consultation also indicate support for the PMO’s position.

### 6.3 CWP Select Committee proposal to fund research from royalties

The CWP Select Committee recommended that any surplus income from royalties should be invested with the Queensland Investment Corporation (QIC). Given the PMO’s position that royalty revenue should not be pursued as a funding option for regulatory activities, the PMO’s analysis of this proposal focused on the merits of its stated objective, which is for funds invested with QIC to produce an income stream for future operational and (notably) research needs. To this end, the PMO supports a view that there is a sound policy rationale for government facilitating scientific research in the area of mine safety and health. However, while the PMO believes that research in the area of mine safety and health has merit, it is unclear as to whether a dedicated fund would improve on current arrangements. Furthermore, given the PMO’s position that a funding source derived from royalties is not appropriate, there is little value in pursuing a proposal in relation to how surplus income from royalties is invested.

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<sup>34</sup> Queensland Treasury (2018) Principles for Fees and Charges, p. 4.

## 7 Funding model options

### 7.1 Consideration of alternative approaches

Having concluded that royalties did not represent an appropriate substitute for the current safety and health fee, the PMO examined potential alternative methods of funding a resources safety and health regulator.

The PMO was mindful of the CWP Select Committee finding that 'the funding mechanism for these vital government functions should not be so closely tied to the number of workers employed in the mining industry at any given time.'<sup>35</sup> This proposition is certainly persuasive; a mine site or quarry will not necessarily require significantly less attention simply because fewer workers are employed there, and so a system based solely on worker numbers poses risks in terms of financial certainty for the regulator.

The PMO investigated a number of alternative models to the current approach of the safety and health fee, which is based on worker numbers, and royalties, which was the solution suggested by the CWP Select Committee.

The alternative models to the current approach which were considered by the PMO (each of which was rejected) included:

Measure	Reason for rejection
Proportion of wages paid	The overall value of wages paid is highly correlated to employment levels, therefore a safety and health fee based on a proportion of wages would also be highly exposed to the economic health of the resources industry. This approach does not address the issues raised by the CWP Select Committee and is administratively more complex than the current approach.
Volume of production	It is likely that this approach could be considered a tax on goods, and therefore a duty on excise. The Constitution provides the Commonwealth Parliament with the exclusive power to impose duties on excise. This approach was therefore deemed unworkable.
Safety performance	<p>A safety performance approach may provide perverse incentives i.e. to create the <i>appearance</i> of good safety management practices rather than achieving improved safety outcomes.</p> <p>Additionally, injury data (usually taken as a measure of performance), is typically a lag indicator that may be out of step with current practice, e.g. an operator may receive discounts on payments based on past performance despite more recent poor safety outcomes.</p>

<sup>35</sup> Coal Workers' Pneumoconiosis Select Committee, 55th Queensland Parliament, Black Lung White Lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland, report no. 2, May 2017, p. 8.

## 7.2 Presentation of funding model options

The PMO developed Discussion Paper 2 which identified potential funding model options to provide a sustainable and effective funding source for the regulator.

The following options were identified in the discussion paper:

- **Option 1: Current safety and health fee**—the status quo with the existing tiers and fee levels per worker.
- **Option 2: Increased fees within existing tiers**—an alternative model based on existing tiers of the safety and health fee with an increase to fee levels per worker.
- **Option 3: New tiers and adjusted fees**—an alternative model based on new tiers and adjusted fee levels per worker.
- **Option 4: Base and variable fee**—the model includes a flat-rate base charge using the tiers proposed in Option 3 to cover the fixed costs of the regulator. It also includes a variable charge that is based on both employment numbers and safety risks.

The four funding model options were assessed against the following three criteria:

Criteria	Explanation
Effectiveness	The funding mechanism should recover costs in a predictable and sustainable way to ensure the desired outcomes of regulation are achieved.
Efficiency	The activity being cost recovered should be delivered in a cost effective way with the costs recovered in a manner that is equitable.
Transparency	A cost recovery mechanism should be easily understood and communicated clearly to stakeholders, both in terms of how it works and what expenses it is recovering.

## 7.3 Description of options

### 7.3.1 Option 1: Current safety and health fee

		Tier 1	Tier 2
Responsible person	5 or fewer workers	6–10 workers	11 workers or more
Mine/quarry operators Explosives authority holders	Exempt	\$110.80 per worker	\$880.00 per worker

Option 1 was the base case, representing the status quo.

The current safety and health fee is calculated on the number of workers in the industry and the budgeted cost of services. In this arrangement, operations with 5 or fewer workers are exempt, while remaining operators are divided into two tiers: Tier 1 for 6 to 10 workers; and Tier 2 for 11 workers or more. This arrangement is well understood and administratively straightforward, however, it is less successful in relation to the guiding principles of effectiveness, efficiency and transparency.

In terms of effectiveness, the PMO notes that predictability in this model is variable. Fees collected align fairly closely to the relevant operating costs of the regulator, though surpluses and deficits are common. While these largely balance out over time an overall deficit of around 1% has persisted from 2008/9 to 2016/17. This model is not currently recovering the full costs of regulatory activity and the situation will worsen once additional and ongoing CWP-related costs are added to the costs of the regulator.

In terms of efficiency, the PMO notes the several design features that may contribute to inequity. First, the burden placed on Tier 2, which accounts for 99% of revenue, is particularly significant. This presents problems of vertical equity. Vertical equity refers to entities contributing in a way that is proportionate to their means—that is, those entities with greater means should be expected to bear more of the burden of regulatory costs. In this case, however, the sheer size of Tier 2 means that medium sized mines are debatably bearing too much of the regulatory burden, given that they pay the same fee as very large mines. This is arguably an inequitable situation.

Second, there appear to be horizontal equity issues inherent in the operation of the fee. Horizontal equity refers to entities in similar situations being treated in similar ways and that cross-subsidisation—one type of mine or mining activity bearing a share of the regulatory burden that is disproportionate to the costs of its regulation—should be avoided where possible. Coal, for example, provides approximately 70% of the revenue for the regulator, but accounts for less than half of regulatory activity. Again, this is explainable when considering the workforce numbers (which are concentrated heavily in coal mining), but the argument that cross-subsidisation occurs in this arrangement does have some substance.

In terms of transparency, the PMO notes efforts are made to make relevant data available publicly, but suggests that this information might be presented in a manner that more readily allows stakeholders to determine what the fee is being used for, and the extent to which its use is efficient and effective.

### 7.3.2 Option 2: Increased fees within existing tiers

		Tier 1	Tier 2
Responsible person	5 or fewer workers	6–10 workers	11 workers or more
Mine/quarry operators Explosives authority holders	Exempt	% increase to current fee per worker	% increase to current fee per worker

This option retains the current safety and health fee structure but provides for higher fee levels for both Tier 1 and Tier 2. Operations with 5 or fewer workers remain exempt.

It is anticipated that the increase in Tiers 1 and 2 would be proportionate (i.e. both are increased by the same percentage of current levels) and based on removing the anticipated revenue shortfall likely under Option 1.

In terms of effectiveness, the increase in the fee level will ensure for full cost recovery, but this model does nothing to mitigate against significant falls in employment which would naturally impact on the revenue stream for the regulator and/or require frequent adjustment of the fee.

In relation to efficiency, this model retains the same shortcomings as Option 1 in relation to equity.

The issue of transparency will be a matter for the regulator to address on an operational basis. There is no particular impediment to the production of user friendly information on the collection and allocation of the fee.

### 7.3.3 Option 3: New tiers and adjusted fees

		Tier 1	Tier 2	Tier 3	Tier 4
Responsible person	5 or fewer workers	6–10 workers	11–19 workers	20–99 workers	100+ workers
Mine/quarry operators Explosives authority holders	Exempt	No. of workers multiplied by \$a*	No. of workers multiplied by \$b*	No. of workers multiplied by \$c*	No. of workers multiplied by \$d*

\* Note fee per worker would increase at each tier

This option proposes replacing the two-tier structure of Options 1 and 2 with a four-tier structure as demonstrated above. As before, operations with 5 or fewer workers would be exempt.

The main objective of this option is to spread the regulatory cost burden more widely by introducing two additional tiers in the middle of the model covering operations with 11 to 19 workers, and operations with 20 to 99 workers. The highest tier would begin at 100 workers, rather than 11 workers under the current safety and health fee. The anticipated fee per worker is intended to be progressive, that is, the fee per worker will increase at each level.

In terms of effectiveness, the advantage of this model is that it broadens the revenue base and allows fees to be set more progressively, which in turn presents an opportunity to improve the sustainability of the funding model beyond that of the previous options. It remains administratively straightforward and provides increased flexibility in relation to fee setting to deliver full cost recovery.

This option potentially goes some way to address issues of vertical equity identified with previous options, by introducing a more progressive structure through additional tiers that can spread the regulatory burden more evenly over different sized mines. However, it does little to remedy issues of cross-subsidisation.

As before, the issue of transparency will be a matter for the regulator to monitor and resolve.

### 7.3.4 Option 4: Base and variable fee

<b>Total Fee = Base charge + Variable charge</b>
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Base charge					
		Tier 1	Tier 2	Tier 3	Tier 4
Responsible person	5 or fewer workers	6–10 workers	11–19 workers	20–99 workers	100+ workers
Mine/quarry operators Explosives authority holders	Exempt	Flat-rate fee of \$w*	Flat-rate fee of \$x*	Flat-rate fee of \$y*	Flat-rate fee of \$z*

\*Note: The flat-rate fee would increase at each tier

+

Variable charge
Fee per worker × No. of workers × Risk multiplier

The final model proposed by the PMO provides for a fee based on two separate components:

- a base charge to recover the fixed costs of the regulator
- a variable charge to recover the costs of regulatory activity.

In this option, the tier structure proposed in Option 3 is retained. The base charge is an annual flat-rate charge that varies by tier. The variable charge is comprised of a fee per worker in accordance with the tier structure, and a multiplier that accounts for the relative risk of operations. The PMO employed the risk multipliers in use in the NSW mining sector with the caveat that should such a system be favoured in Queensland, work would be required to ensure the relative risk ratings of each industry were rigorously assessed prior to adoption.

In terms of effectiveness, it is the PMO's contention that this option may provide the greatest opportunity for a stable and predictable revenue source because it is not entirely tied to worker numbers (though it is more responsive to the number of mining operations). However, the risk-based system would be more administratively complex than other options.

This option also provides the best opportunity for improvement in relation to equity. This model improves vertical equity by applying progressivity in the base charge and it deals with horizontal equity through the use of the risk multiplier, which aims to more closely link fees to the regulatory effort for each sector. However, the PMO notes that the skewed nature of employment towards large coal mines means that it is unlikely Option 4 would reduce the disparities in revenue share and regulatory burden entirely.

As with each of the proposed alternatives, the issue of transparency will be a matter for the regulator to monitor and resolve.

## 7.4 Consultation

Discussion Paper 2 was released to stakeholders on 2 May 2018, and the consultation period ended on 1 June 2018. A public information forum to explain the funding proposals was held in May 2018.

Stakeholders were asked to consider how each of the funding model options achieved the criteria of effectiveness, efficiency and transparency, and provide feedback, nominating a preferred model.

The feedback received by the PMO was limited to eight responses, five of which responded to the questions posed by the PMO to provide an indication of their preferred model. The remaining three responses did not indicate a preference for any of the models suggested and posited alternative mechanisms to fund the regulator.

Of the eight responses received:

- five responses were from industry representative groups
- one response was from a group representing the interests of workers
- two responses were from individuals.

### 7.4.1 Summary of feedback

Option	Level of support	Comments
Option 1: Current safety and health fee	Low  This option was not preferred by any respondents. This option was ranked 4 <sup>th</sup> three times, 3 <sup>rd</sup> once and 2 <sup>nd</sup> once.	No comments received from stakeholders.
Option 2: Increased fees within existing tiers	Moderate  This option was ranked 2 <sup>nd</sup> twice, 3 <sup>rd</sup> twice and 4 <sup>th</sup> once.	No comments received from stakeholders.
Option 3: New tiers and adjusted fees	High  This option was ranked 1 <sup>st</sup> twice, 2 <sup>nd</sup> twice and 3 <sup>rd</sup> once.	The following comments were received from stakeholders:  The fees should be directly proportional to resource output and linked to the highest price obtained for the commodity in any one financial year.  Option 3 presents a more sustainable solution and goes some way to addressing equity issues as the revenue base is increased with this model. The issue with this model, as with all others, is that the burden falls on the coal industry which utilises a lower proportion of services as opposed to the metalliferous and quarry industries.

Option	Level of support	Comments
Option 4: Base and variable fee	High  This option was ranked 1 <sup>st</sup> three times, 3 <sup>rd</sup> once and 4 <sup>th</sup> once.	<p>The following comments were received from stakeholders:</p> <p>Option 4 best represents a risk-based approach which is not arbitrarily linked e.g. to number of workers, production, size of asset etc.</p> <p>A fee based on tonnes produced in each industry should be considered. This can be linked to a variable fee based on sale price of the produced commodity. In the tunnelling industry, where tonnes are not sold, metres advanced should be the applicable fee.</p> <p>Option 4 is rated last as the least preferable option. While underground coal is ranked as high risk due to inherent hazards, the fact is that the metalliferous industry, metal mines and quarries have a higher fatality rate; thus we believe that placing a further financial impost on the coal industry through an arbitrary risk profile, when they already pay over the odds for services when compared to the metals sector, is not an equitable outcome.</p>
Additional stakeholder suggested models	Additional models were suggested including funding the regulator from a proportion of workers compensation premiums, billable hours of the regulator, production and general government revenue.	<p>The following comments were received from stakeholders:</p> <p>WorkCover should be an option considered as a funding source. One benefit of utilising WorkCover would be that those smaller operators that are currently exempt from paying the safety and health fee would be included. It is noted that a significant failing of the current funding system appears to be that the revenue being collected from smaller mining operators through their WorkCover premiums which might otherwise help meet safety compliance costs in the resources sector is not being passed on to their safety regulator.</p> <p>Noting that the guiding principle for fees and charges is that those individuals and groups who benefit should pay, then where the public is benefiting from the service, as is the case with explosives (e.g. public fireworks displays), the inspectorate should be funded by taxpayers from general government revenue.</p> <p>The fee should be based on the billable hours of the regulator, with the rate calculated to match regulatory revenue and expenditure.</p> <p>All operators should make a contribution towards safety regulator costs and the setting of fee levels should take account of the relative price return values and risk profile of the various mining and quarrying sectors.</p>

In summary, from the eight responses received, the following preferences were identified:

- three respondents indicated a preference for Option 4—Base and variable fee
- two respondents indicated a preference for Option 3—New tiers and adjusted fees
- three respondents did not nominate a preference.

The feedback on the funding options is mixed. The fact that three stakeholders did not nominate any preferences meant that the ordering of preferences by the remaining stakeholder group was unhelpful. Three of the remaining five stakeholders nominated Option 1 (Current safety and health fee) as the least preferred approach, but the numbers in this pool are limited and the nomination of the next preferred options is so scattered that meaningful assessment is difficult.

## 7.4.2 Stakeholder concerns

Several stakeholders have made strong representations to the PMO regarding the perceived lack of fairness in the way in which the funding of regulation and compliance in the resources industry operates.

These concerns relate to three main issues. First, that charging should be based on ability to pay, and that this is directly linked to the value of the commodity being extracted. Second, that the current system is designed in such a way as to ensure that coal operations effectively subsidise the non-coal sector. Third, that the requirement to contribute to the funding costs of both the resources safety and health regulator and the WHS regulator—when the majority of stakeholders receive services from just one of these bodies—is unjust.

In relation to the first point, the current system already contains some mechanisms that take account of ability to pay. First, it should be noted that the structure of the fee arrangement means that, in 2016/17, more than 99% of fees paid were paid by those in the top tier. Second, the smallest operators are exempted from paying any fee whatsoever. The PMO acknowledges concerns raised by some stakeholders that this exemption is itself unfair, however, for reasons relating to ability to pay and mindful that the cost of collecting fees from small operators outweighs revenue, this exemption will remain under the PMO's recommended model. It is accepted that the value of a commodity will have a bearing on an operator's ability to pay, however, the value of the commodity is not proportional to the regulatory effort required, and the fee must recover the costs of regulation.

The issue of equity in the existing system is one that was examined in Discussion Paper 2. Presently, coal operators contribute approximately 70% of revenue to the regulator, but account for less than half of regulatory activity. This issue is problematic to solve in any model based solely on worker numbers due to the very high proportion of resource workers employed in the coal sector. Options 1 and 2 do nothing to improve this situation, while Option 3 is marginally more equitable. Of all the options presented, Option 4 comes closest to resolving this issue, but, interestingly, coal industry representatives were silent on this matter.

Finally, the PMO recognises and has some sympathy for the contention that the collection of a safety and health fee as well as the collection of the Workers Compensation Regulator Levy through WorkCover premiums represents a 'double dipping' approach in the regulatory landscape. The industry reasonably highlights the fact that a proportion of WorkCover contributions fund the WHS regulator; a regulator that has limited or no jurisdiction in resource safety in Queensland (notable exceptions being major hazard facilities). Nevertheless, the PMO considers that the issue is not to be resolved within its work programme. In the first instance, the PMO has been asked to consider a replacement for the current safety and health fee. There is no question that a fee will continue to be collected to fund the regulator. This approach aligns with the government's policy on cost recovery. Further, it is clear that the resources safety and health regulator does have jurisdiction in the resources safety and health space in Queensland. In other words, the fee that has been—and will, in some form, continue to be—charged, relates specifically to a function provided in the service of those operating in the resources industries. It is therefore entirely legitimate for government to recoup those costs. The same may not be true in relation to that proportion of WorkCover funds that go to the WHS regulator.

This is, the PMO acknowledges, a live issue for the industry and one which will likely continue to be explored. It is, however, outside the scope of the PMO's work, and arguably a matter to be dealt with by the government. Furthermore, it is the PMO's view that such a policy shift could only occur on the basis of a careful assessment of the implications, a process that is likely to take some time.

## 8 Recommended funding model

### 8.1 PMO recommended funding model

Option 3: New tiers and adjusted fees

		Tier 1	Tier 2	Tier 3	Tier 4
Responsible person	5 or fewer workers	6–10 workers	11–19 workers	20–99 workers	100+ workers
Mine/quarry operators Explosives authority holders	Exempt	No. of workers multiplied by \$ <i>a</i> *	No. of workers multiplied by \$ <i>b</i> *	No. of workers multiplied by \$ <i>c</i> *	No. of workers multiplied by \$ <i>d</i> *

\* Note: Fee per worker would increase at each tier.

The feedback received regarding a preferred funding model was equivocal. The even split of views, coupled with the very small number of responses and the additional issues raised by stakeholders in regard to the justification for the fee itself, make it difficult to assert that any model has the majority backing of the sector.

As a result, the PMO has relied largely on its own analysis in relation to this recommendation and suggests that Option 3—New Tiers and Adjusted Fees represents the most appropriate funding model to deliver a reliable and sustainable revenue stream for the regulator.

#### Recommendation 10

That the safety and health fee be replaced with a funding model with new tiers and adjusted fees.

#### 8.1.1 Modelling

The PMO engaged KPMG to undertake modelling of funding options based on the costings prepared by BDO for the regulator model options.

As noted, the PMO has recommended that the regulator be established as a standalone statutory authority. The cost of the recommended regulator model is expected to be similar to that of Option 2 presented in Discussion Paper 1. However, as the regulator model is a variation to Option 2, further work will be required to determine the final costs of the recommended regulator model.

On the next page is a table showing the potential fees for a statutory authority based on Option 3—New tiers and adjusted fees.

Under the current safety and health fee, operators with 6 to 10 workers pay \$110.80 per worker; and operators with 11 workers or more pay \$880.00 per worker. Based on a statutory authority model (with a similar cost to regulator model Option 2), operators in Tiers 1, 2 and 3 would pay less under the recommended funding model. Operators in Tier 4 will most likely pay more.

Potential per worker fees (and increase/decrease compared to current funding) under funding Option 3

	Exempt	Tier 1	Tier 2	Tier 3	Tier 4
Regulator model	0–5 workers	6–10 workers	11–19 workers	20–99 workers	100+ workers
Option 1: A Mine Safety and Health Authority	NA	\$124 (+12%)	\$620 (–30%)	\$930 (+6%)	\$1240 (+41%)
Option 2: A standalone statutory entity	NA	\$107 (–4%)	\$535 (–39%)	\$802 (–9%)	\$1069 (+21%)
Option 3: A division within a department or agency	NA	\$103 (–7%)	\$513 (–42%)	\$770 (–13%)	\$1026 (+17%)
Option 4: A combined WHS and resources safety and health regulator	NA	\$103 (–7%)	\$513 (–42%)	\$770 (–13%)	\$1026 (+17%)

## 8.2 Consideration of the options

In making its recommendation, the PMO is mindful of the requirement for the model to fully recover costs, to demonstrate effectiveness and efficiency, and to offer a level of transparency that might reasonably be expected by those required to pay the fee.

As outlined in section 7.3, Option 1, the current safety and health fee, will not provide a full cost recovery model once the additional costs of CWP-related activities are factored in, regardless of the regulator model adopted. The model fails in its primary objective and is the least attractive of the options presented.

Option 2, which retains the structure of Option 1, but increases the fees with the aim of achieving full cost recovery, is clearly designed to be more successful by that measure. However, this option is equally susceptible to changes in workforce numbers and retains the equity flaws (both vertical and horizontal) identified at Option 1. For these reasons, the PMO considers this model to be ineffective.

Option 3, which adopts additional tiers and adjusted fees, provides a more sustainable option while dealing with some of the issues inherent in the current fee structure. The PMO recommends that this funding model be adopted.

Option 4, which presents a base and variable fee, was favoured by the largest number of respondents (in an admittedly small sample), but also strongly disfavoured. The PMO considers this model likely to provide the best long term solution of those presented. The model is the only one that partially decouples funding from worker numbers (thus limiting the impact of fluctuations in the workforce and linking the fee to operational considerations, such as the risk posed by a particular type of mine or mining activity). However, this model is also burdened by a degree of administrative complexity as well as the potential for disagreement between stakeholders over issues such as risk ratings. These are issues that would require further analysis and additional consultation with stakeholders. For reasons of stakeholder acceptability, administrative complexities and timeliness, this option is considered impractical as an alternative to the existing arrangements in the short term.

### 8.3 A word on transparency

The PMO highlighted the importance of transparency in Discussion Paper 2 and within each of the funding models proposed. It is the PMO's view that it is a reasonable expectation that stakeholders are entitled to examine and hold to account those responsible for the expenditure of funds remitted by them. It is reasonable for industry to be assured that regulatory functions are being performed in an effective and efficient way. The most straightforward and direct means for the regulator to demonstrate this is by making relevant information available in a user friendly manner. This may involve additional effort by the regulator: first to understand what data or information stakeholders wish to access; and then to make that information or data available. The PMO does not suggest the regulator should necessarily be required to create new information to satisfy stakeholder requests—this additional burden would, of course, come at a cost—but more effective reporting of e.g. income and expenditure should be achievable with minimal additional effort.

### 8.4 Proposed implementation

Introducing a new fee structure based on Option 3 will take further time and effort. It is anticipated that work will be required to update administrative processes and systems, where required, to ensure successful implementation. In concert with this process, ongoing engagement with stakeholders is considered desirable.

The safety and health fee is provided for under regulation. As such, amendments to the coal mining, mining and quarrying, and explosives regulations will be required to provide for the recommended funding model. The timing of this will be a matter for government to determine. The PMO recommends that the current safety and health fee continue in operation until such time as the new funding model takes effect. This will ensure the continuation of funding for the regulator, noting that there may be some shortfall arising from additional costs associated with the implementation of processes to deal with CWP-related issues.

## 9 Proposal to expand the definition of coal mine worker

The CWP Select Committee made 68 recommendations directed at improving safety outcomes for coal workers in Queensland. The PMO has examined 19 of those recommendations, most of which relate to structural reform and funding. Within the recommendations considered by the PMO, three recommendations relate to an expanded definition of coal mine worker. These are as follows:

### **Recommendation 38**

*The current Coal Mine Workers Health Scheme should be renamed the Coal Workers' Health Scheme.*

### **Recommendation 65**

*An expanded or additional category of workers, defined as 'coal worker', should be established to include workers involved in the transportation and handling of coal outside a 'coal mine' including rail workers (e.g.: coal train loaders and drivers), port workers (e.g.: dozer, stacker/reclaimer, and ship loader operators), power station workers, and maritime workers (e.g.: tug and line boat crew).*

### **Recommendation 66**

*The definition of 'coal worker' for these purposes should ensure these workers are protected by the legislated OEL; their working environments are subject to mandatory atmospheric monitoring of respirable dust and mandatory reporting of the results of that monitoring; and the Coal Workers' Health Scheme.*

Workers in related industries, such as those involved in the transportation and handling of coal, fall within the jurisdiction of WHS legislation administered by the WHS regulator. The separation of a particular class of worker is problematic in terms of relative protections afforded under different legislative instruments as well as an appropriate delineation of the type of workers to be covered. The key issue is to ensure that the protection afforded to these workers is appropriate.

It is understood that during investigation of these matters, as part of the CWP Select Committee's extended terms of reference, the measures being undertaken by the WHS regulator to reduce worker exposure to respirable dust alleviated to some extent the CWP Select Committee's concern regarding the exposure of coal and rail workers. Control measures for other work activities such as those involving workers in coal-fired powered stations needed to be further explored.

The PMO has undertaken consultation with OIR as the WHS regulator on these recommendations. In May 2018, OIR wrote to the PMO advising that OIR is best placed to respond to the CWP Select Committee recommendations in relation to proposed coverage of workers involved in the handling, processing and transportation of coal and these matters will now be taken forward by OIR. The PMO supports this approach.

## 10 Further measures identified to improve resources safety and health regulation

Matters other than structural reform and funding are not within the scope of the PMO work programme, however, the PMO has previously stated that meaningful improvements in the regulation of safety and health will be derived from a combination of good legislation, effective operational systems and practices, and a structural framework supported by good governance. Structural reform and funding should not be seen in isolation of the other elements.

The PMO submits that there are opportunities within the current review process that can deliver far reaching benefits to the Queensland resources sector including:

- A review of the *Mining and Quarrying Safety and Health Act 1999* and regulations to ensure that workers covered by this legislation are afforded the same protection as workers covered by coal mining legislation. This is particularly urgent in relation to health surveillance and monitoring.
- Possible amendments to provisions within the resources safety legislation to allow any person who is not satisfied with the decision of the regulator in relation to a prosecution to refer the matter to the Office of the WHS Prosecutor for prosecutions, or alternatively, for decisions of the Office of the WHS Prosecutor, to the ODPP.
- Adoption of Enforceable Undertakings. The PMO is of the view that the resources sector in Queensland is well placed to benefit from the use of Enforceable Undertakings (EUs). EUs allow the regulator to enter into a binding agreement with mine operators and authority holders to undertake far reaching improvements to safety and health management. EUs can avoid time consuming litigation and can, in the right circumstances, deliver positive outcomes for the safety of workers. EUs are widely used in WHS, environmental legislation and business regulation (the Australian Competition and Consumer Commission).
- A review of staffing arrangements in regional Queensland with, if need be, a repositioning of staff to ensure that regional offices are appropriately staffed.

The matters outlined here have been identified by the PMO as measures that should be considered to improve resources safety and health regulation in Queensland. They are significant matters and, while they echo the views expressed by a number of stakeholders through the public consultation process, they clearly require further investigation and consultation to ensure that any proposed changes are workable and acceptable. The PMO submits that these measures complement the proposed structural reforms and a formal plan of action encompassing stakeholder consultation should be implemented as a priority.

## 11 Recommended next steps

The PMO is recommending a number of key changes to the resources safety and health regulator. Fundamentally, the PMO is recommending that the regulator is established as a standalone statutory authority (incorporating a strategic advisory council) and supported by a new funding model. If agreed this approach will involve a body of work to give effect to the new regulator and its funding arrangement.

In particular the creation of a standalone statutory authority will require:

- new legislation to establish the authority and describe its various functions
- amendment to existing resources safety legislation to provide for components of the regulator model and recommended funding model
- further consultation with stakeholders to describe and explain the operation of the new models
- updating of administrative processes and systems, where required, to support the funding model
- additional costings to determine a more accurate position on the funding needs of the regulator.

It is important to keep in mind that the regulator model proposed by the PMO is different to the regulator models presented in Discussion Paper 1. The recommended model contains a Commissioner, an Advisory Council, a new Investigations Unit and a proposal to refer alleged serious breaches of legislation to the Office of the WHS Prosecutor. With this in mind, further consultation and engagement with key stakeholders is required to ensure that stakeholders are fully aware of those differences and have an opportunity to comment on them.

# Appendix 1

## CWP Select Committee recommendations progressed by the PMO

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### Recommendation 1

There should be a truly independent Mine Safety and Health Authority, established as a statutory authority and body corporate, with responsibility for ensuring the safety and health of mining and resource industry workers in Queensland.

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### Recommendation 2

The Mine Safety and Health Authority should be established under its own legislation as a 'unit of public administration' for the purposes of the *Crime and Corruption Act 2001* and a 'public authority' for the purposes of the *Right to Information Act 2009*.

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### Recommendation 3

The Mine Safety and Health Authority should be governed by a Board of Directors, chaired by the Commissioner for Mine Safety and Health, and including representation of:

- coal mine operators
  - metalliferous mine operators
  - unions
  - resources transportation and ports
  - persons independent of the mining industry (including resources transportation and ports).
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### Recommendation 4

A parliamentary committee should oversee and monitor the operation of the Mine Safety and Health Authority. The Minister should be required to consult with the parliamentary committee regarding the appointment of the Commissioner and Board.

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### Recommendation 5

The Mine Safety and Health Authority should be established in Mackay, ensuring the Commissioner, senior management, Mines Inspectorate, Coal Workers' Health Scheme, and mobile units are all based in central Queensland.

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### Recommendation 6

The Commissioner for Mine Safety and Health should be a senior officer of the Mine Safety and Health Authority and given proper statutory independence, with the Commissioner not subject to the direction of the Minister.

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### Recommendation 7

The Mines Inspectorate, currently within DNRM should be administratively relocated within the Mine Safety and Health Authority, ensuring statutory and administrative independence from DNRM.

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### Recommendation 8

The Commissioner should have an express power to direct inspectors, including the chief inspector, inspection officers and authorised officers, in relation to the investigation of a possible offence or offences against the mining safety and health Acts.

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**Recommendation 9**

The occupational hygiene services currently offered by SIMTARS on a fee for service basis should be discontinued. The officers who currently provide those services should be redeployed to the Mine Safety and Health Authority to undertake research and/or occupational hygiene inspection activities within the inspectorates.

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**Recommendation 16**

The safety and health fee currently provided for by part 2A of chapter 2 of the Coal Mining Safety and Health Regulation 2001 should be abolished.

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**Recommendation 17**

The Mine Safety and Health Authority should be funded by a dedicated proportion of coal and mineral royalties paid to the Queensland Government, to be determined in consultation with industry and unions after an assessment of the operating costs of the Authority is undertaken.

The dedicated proportion of the royalties should be fixed by regulation and reviewed periodically by the parliamentary committee responsible for the Mine Safety and Health Authority.

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**Recommendation 18**

Any surplus income derived from the dedicated proportion of royalties that is not allocated to, or expended from, the annual budget of the Authority should be invested with the Queensland Investment Corporation for the future research and the operational needs of the Authority.

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**Recommendation 38**

The current Coal Mine Workers' Health Scheme should be renamed the Coal Workers' Health Scheme, recognising the important inclusion of all workers involved in the mining, handling, processing and transportation of coal.

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**Recommendation 47**

The Coal Workers' Health Scheme should obtain and utilise at least one Coal Workers' Health Mobile Unit, similar to those used by NIOSH, capable of delivering chest x-ray, spirometry, and general health assessments for coal workers and former coal workers in regional Queensland.

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**Recommendation 48**

The Coal Workers' Health Mobile Units should be properly staffed and maintained under the Coal Workers' Health Scheme, and operate out of the Scheme's headquarters in Mackay.

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**Recommendation 49**

The cost of health assessments undertaken at the Coal Workers' Health Mobile Units should be met by the Coal Workers' Health Scheme.

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**Recommendation 61**

The Coal Mining Safety and Health Advisory Committee and similar committees established under the mining safety and health Acts should be abolished and their statutory functions transferred to the Board of the Mine Safety and Health Authority.

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**Recommendation 65**

An expanded or additional category of workers, defined as ‘coal worker’, should be established to include workers involved in the transportation and handling of coal outside a ‘coal mine’ including rail workers (e.g.: coal train loaders and drivers), port workers (e.g.: dozer, stacker/reclaimer, and ship loader operators), power station workers, and maritime workers (e.g.: tug and line boat crew).

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**Recommendation 66**

The definition of ‘coal worker’ for these purposes should ensure these workers are protected by the legislated OEL; their working environments are subject to mandatory atmospheric monitoring of respirable dust and mandatory reporting of the results of that monitoring; and the Coal Workers’ Health Scheme.

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## Appendix 2

### Stakeholders consulted through the PMO review

Australian Petroleum Production and Exploration Association Limited  
Arrow Energy  
Australian Explosives Industry Safety Group  
Australian Workers' Union  
BHP Billiton Mitsubishi Alliance  
Boral Quarries  
Cement Concrete & Aggregates Association of Australia  
Coal Mining Safety and Health Advisory Committee  
Commissioner for Mine Safety and Health  
ConocoPhillips  
Construction, Forestry, Mining & Energy Union (CFMEU)  
Department of Natural Resources, Mines and Energy  
Department of Mines, Industry Regulation and Safety (WA)  
Department of Planning and Environment (NSW)  
Department of the Premier and Cabinet  
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (ETU)  
Mine Managers Association of Australia  
Mining Safety and Health Advisory Committee  
New Hope Corporation Limited  
Office of Best Practice Regulation  
Office of Industrial Relations  
P&G Stakeholder Engagement Committee  
Queensland Audit Office  
Queensland Health  
Queensland Ombudsman  
Queensland Resources Council  
Queensland Treasury  
Safe Work Australia  
Together Queensland Industrial Union of Employees  
Yancoal Australia Ltd

## Appendix 3

### Summary of the actions undertaken by the PMO in consulting and engaging with stakeholders

Established a web page and email contact to ensure open channels of communication.

Set up a dedicated phone line plus a direct contact facility with all PMO officers.

Issued an open letter to all stakeholders explaining the scope of the work to be undertaken by the PMO, the processes to be followed by the PMO and timeframes against which actions would be delivered.

Prepared and released a Question and Answer fact sheet which provided an overview of all key areas of work and issues to be addressed by the PMO.

Initiated face-to-face meetings and public information forums with stakeholder groups including:

- Government agencies: Department of Natural Resources, Mines and Energy; Office of Industrial Relations; Department of the Premier and Cabinet; Queensland Treasury; Queensland Health; Office of Best Practice Regulation (OBPR); and Queensland Audit Office
- Advisory committees: The Coal Mining Safety and Health Advisory Committee (CMSHAC); the Mining Safety and Health Advisory Committee (MSHAC); and the Petroleum and Gas (P&G) Stakeholder Committee
- Industry representatives and groups: Queensland Resources Council (QRC); Cement Concrete & Aggregates Australia (CCAA); Australian Explosives Industry Safety Group (AEISG); Australian Petroleum Production & Exploration Association (APPEA); BHP Billiton Mitsubishi Alliance (BMA); and Boral Quarries
- Workers' representatives: Construction Forestry Mining Energy Union (CFMEU); the Australian Workers' Union (AWU) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (ETU)
- Commissioner for Mine Safety and Health
- Queensland Ombudsman.

Held three public information forums to describe the key features of the CWP Select Committee recommendations that relate to the work of the PMO and afford stakeholders an opportunity to better understand the options proposed by the PMO for regulator and funding models.

Implemented open house information sessions where all stakeholders were invited to meet with PMO staff to discuss any matters of concern or seek clarification of issues raised regarding the work of the PMO. This was through face-to-face meetings or teleconference (for regional stakeholders).

Prepared and released a discussion paper on options for resources safety and health regulator models in Queensland and three supporting focus papers dealing with governance, the proposal to discontinue the Simtars' fee for service for occupational hygiene, and the proposal to relocate the regulator to Mackay.

Prepared and released a discussion paper on options for funding the resources safety and health regulator in Queensland and a supporting focus paper on the examination of the proposal to fund the regulator from mining royalties.

Prepared and released an additional focus paper on the establishment of mobile health units.

# Appendix 4

## CWP Select Committee model–Mine Safety and Health Authority

