Queensland's Mine Safety Framework
Consultation Regulator Impact Statement submission form
Questions

I am making this submission:

( x ) as an individual

( ) on behalf of a group or organisation (please specify) ________________________________

( ) other (please specify) ________________________________

Are you one of the following?

( ) Senior Site Executive - coal

( ) Underground Mine Manager - coal

( ) Senior Site Executive - metalliferous

( ) Underground Mine Manager - metalliferous

( ) Mine manager or operator – metalliferous

( ) Quarry manager or operator

( x ) Mine worker directly employed - coal

( ) Mine worker contractor - coal

( ) Mine worker directly employed - metalliferous

( ) Mine worker contractor metalliferous

( ) Mine worker directly employed - quarry

( ) Mine worker contractor - quarry

( ) Mining industry association

( x ) Union employee

( ) Union representative

( ) Member of mining community

( ) University representative

( ) Industry training organisation

( ) Government employee

( x ) Other
Background

The following lists the main proposals covered in the Queensland's Mine Safety Framework (QMSF) Consultation RIS. The proposals are covered briefly in the executive summary and in further detail in Appendix E on the QMSF Consultation RIS.

Key initiatives from the non-core options include:

1. improved contractor management
2. existing critical safety positions becoming statutory positions
3. improved risk management planning for high risk activities
4. safety and health management systems for opal or gem mines
5. improved stonedusting and use of explosion barriers.

Proposed provisions from the Model WHS Act that would add additional rigour and consistency include:

6. changes applying to executive officers
7. penalties and offences and imprisonment provisions
8. rights to appeal through the court system (identified options are subject to further consultation)
9. additional possible court orders following a prosecution
10. longer limitation period for prosecutions
11. obligations of designers, constructors, erectors and demolishers
12. protection from reprisal provisions (identified options are subject to further consultation)
13. entry to any workplace for inspectors.

Other proposals identified by Queensland based stakeholders as local issues through the June 2012 consultation process or they were identified by DNRM through other consultation processes include:

14. clarifying the directive given by safety representatives and inspectors about an unacceptable level of risk or the alternative proposal that safety representatives will have a role in the notification of potential risks but will not be able to issue a directive to suspend operations
15. election process for site safety and health representatives
16. fitness for work (coal mines)
17. issues related to mine plans for abandoned mines
18. removing the requirement for coal mines to submit mine plans at the end of each calendar year
19. refocusing the Coal Mine Workers’ Health Scheme
20. increasing the number of industry safety and health representatives
21. manufacturers and suppliers to inform the Mines Inspectorate in the event of a hazardous aspect or defect in equipment supplied
22. implementing Ombudsman recommendations about a confidential complaints system.
Instructions

Please provide examples or data to support your responses where possible. Please also refer to the page numbers within the QMSF Consultation RIS you are commenting on, if you are not directly responding to the questions below.

Non-core NMSF initiatives:

1. improved contractor management (see pages iv, 59, 83-89, appendix k)

Do you agree with the proposed approach? If not, what changes do you suggest and why?

Yes I agree with this approach.

A number of Coronial Inquiries including Shane Davis (Foxleigh Mine) and Jason Blee (Moranbah North), have caused the Coroner to come out with comments on the requirement of the CMSHA for ONE SHMS and the proposed changes appear if worded correctly when translated into legislation to address this matter.

Non core 9.15 – 9.21 and how they are proposed to be put into the CMSHA in obligations and the safety health management system will make it clearer to all Coal mine workers. Training and assessment in SHMS whether an infrequent job or an almost permanent contractor, is critical to stop other workers being injured and the job safe.

While the recent Industry figures are presented that almost all of the fatalities over the last decade have been “contractors”, this does not state that they were all “mine workers” and in the majority of cases were doing tasks which over previous years was a normal mining task and that they were working on a mine which was supposed to have a SHMS to ensure acceptable level of risk.

2. existing critical safety positions becoming statutory positions (see RIS pg v,xviii,47,134)

Do you agree with the proposals? If not, what changes do you suggest and why?

Yes I agree with the retention of the current statutory positions and the proposed additional positions.

It has clearly been seen that most surface mines do not have technical qualified people in the management structures and are not assisting OCEs to get safety right. Need to have input by all parties to the industry, and from various levels, into the competencies for these positions. See directives and MRE issued by Inspectorate and ISHRs.

The competencies for these positions should be a matter for tripartite discussion with the NSW Coal Competency Board and the Qld BOE members being the basis for the development of the discussion papers.
The Qld and NSW BOEs have had parts of their committees meet for the last 3 years and have for the similar positions covered by both agreed on the same requirements without the need for a TECAC.

Can you please suggest how long the transitional period should be for particular positions and why? (RIS pg 48)

There needs to be a process to recognise any competencies held already by people in these jobs, to assist in getting qualified people into the roles quicker and then a period of up to 2 years transition for all to hold the qualifications.

People who are currently acting in these positions should already have some knowledge and working experience in the competencies to be required and with a proper RPL RCC process through competent RTOs should not need long to attain the competencies and apply for examination by the BOE.

There should be some clause in the transition to require where once a position has been filled by a person holding the statutory certificate then they should be replaced by a similar qualified person or notification made to the CIOCM if this does not occur and some rigid conditions put on this position.

The BOE will need resources to assist in the assessment of the additional persons.

Do you agree with the recommendation of the Coal Mining Safety and Health Advisory Committee that statutory position holders be directly employed and not engaged as contractors, or alternatively that they generally work exclusively for a mine (for example, 85% of the time). Would this be practical if they also, at times work across the operator’s mines covering leave and absences as required? (RIS pg 61)

Yes they need to directly reportable to the operators representative SSE and also not be at the call of other parties for their remunerations. The similar requirement is in the NSW coal legislation and if not made must be with the approval of the CIOCM. It was a majority decision of the CMSHAC which again seems to have not been put forward to the Minister, under5v the guise of the wait for the harmonisation, as some people did not like the decision.

Further information is in Appendix E of the QMSF Consultation RIS under Recent Queensland proposals in the Statutory Positions section. Please provide any information about practical considerations.

Open cut mine manager, undermanager, ventilation officer, should be made statutory certificate holders and electrical engineering managers for surface mines

Supervisors competencies need to be more aligned to the role being supervised, and should not be able to override any technical decision of a person who holds a statutory certificate in the area of concern.

Persons who hold the statutory certificate have been shown through a rigorous process to be able to apply the competencies they have attained.
3. improved risk management planning for high risk activities (see RIS pg 90, Appendix L 161)

Do you agree with the proposed approach and list of high risk activities? If not, what changes do you suggest and why?

Yes I agree

As long as the current notifications remain and, that where an Inspector has to sign off to allow people to remain underground should be tightened up to mean this is done when sealing occurs not a long time before.

Also the regulations related to high risk matters need to retain specific details to assist mines to develop the SHMS for these.

The Harmonised draft Version 6 Non Core is deficient in information to assist a mine to develop such high risk notifications in a detailed manner.

4. safety and health management systems for opal or gem mines

Do you agree with the proposed approach? If not, what changes do you suggest and why?

Not applicable to my role

5. improved stonedusting and use of explosion barriers. (viii, Appendix I, 14,80)

Do you agree with the proposed approach? If not, what changes do you suggest and why?

Yes I strongly agree with the reintroduction of explosion barriers in underground mines.

It is interesting to note that current mines which existed at the time that the legislation changed from the 1925 Act and regulations, do not have a risk assessment to show that by removing these and explosion segregation stoppings they were still achieving acceptable level of risk.

The current stonedust requirements are good, but how long to redust areas while testing of samples are being done leads to areas of the mine, especially conveyor roads and returns are constantly out of compliance and hence leave a potential path of an ignition of gas to propagate. Examples like Moura No2 and NSW Endeavour Colliery show that water or stone dust will stop the intensity of an explosion.

I had never heard of the Cybulski report but after reading that I agree that the maximum distance allowed to be cut before the need to stonedust should be decreased to 30 m.

Any new stonedusting types introduced must be scientifically validated or by multiple event tested to be shown effected prior to introduced.
Proposals from the *Model WHS Act* that would add additional rigour and consistency:

6. changes applying to executive officers (see RIS ix, 92,115)

Do you agree with the proposed approach? If not, what changes do you suggest and why?

**Yes I agree.**

As long as they are made accountable for any incidents where they have not ensured the operators or others at the mine have been provided resources and assistance to minimise risk to workers. And they are killed or injured or workers are exposed to serious risk to their safety and health.

7. penalties and offences and imprisonment provisions (see RIS pg 9,93)

Do you agree with the proposed approach? If not, what changes do you suggest and why?

**No I do not agree with this provisions.**

Some of these changes appear to dilute the types of offences that relate to the penalties. I have no problem bring penalties in line with WHS legislation.

8. rights to appeal through the court system (identified options are subject to further consultation) (see RIS pg x)

Which option do you prefer? Please suggest why you prefer that option.

While seeing why company representatives would want an appeal process to go to other court jurisdiction, what about a process that gives a common worker the right to have their case heard where it is alleged they breached the SHMS or legislation and the employer sacks them on safety grounds. They do not get an appeal only through the industrial relations system.

9. additional possible court orders following a prosecution (see RIS pg x)

Do you agree with the proposals? If not, what changes do you suggest and why?

**Yes**

But this should also include enforceable undertaking where a guilty admission is made to the charge and then instead of going to court an undertaking which may assist the industry can be agreed. ISHRs or SSHRs may be part of the follow-up team.
NSW mines inspectorate have recently issued an example of where these benefit the industry. Centennial and Sandvick presented this to the NSWQ Local Check Inspectors forum 2013 in regards to a fatal incident involving drill rigs underground.

10. longer limitation period for prosecutions (see RIS pg xi)
Do you agree with the proposals? If not, what changes do you suggest and why?

Yes this may allow for better or more detailed investigations, but the department should attempt to get these done ASAP to make it less stress on persons associated with the incident.

11. obligations of designers, constructors, erectors and demolishers ((see RIS pg xi)
Do you agree with the proposals? If not, what changes do you suggest and why?

Yes make the obligations of these positions clearer for persons to understand and comply with.

12. protection from reprisal provisions (identified options are subject to further consultation) (see RIS pg xi)
Which option do you prefer? Please suggest why you prefer that option.

Yes.

As long as the ATSB (reporting system) process parts are only for confidential reporting and not able to be used to allow a operator etc to report a accident and not have any penalty against them. The other aspect is to stop confidential complaints information to Inspector or ISHR allowed to be released even under RTI (right To Information).as per s275AA CMSHA

13. entry to any workplace for inspectors.
Do you agree with the proposal? If not, what changes do you suggest and why?

Agree that Inspectors can enter workplaces other than mines if mining associated safety is at risk.
Local proposals

14. clarifying the directive given by safety representatives and inspectors about an unacceptable level of risk or the alternative proposal that safety representatives will have a role in the notification of potential risks but will not be able to issue a directive to suspend operations

No I do not agree and in fact strongly oppose this change

In my opinion and in my 20 years as an DUI/ISHR I have only seen one case where a directive was issued without a belief that there was an unacceptable level of risk present, and on the other occasion there may have been a belief but the risk might not have been “present and the time but perceived it would be if the process was implemented”.

In my position as ISHR I have been in the position where I have believed that the risk to CMW safety and health was “not at an acceptable level”. On a number of these occasions I have had sufficient information to have a belief and hence issued the directive whilst not at the mine.

Example of this was where a mine had experienced a third frictional ignition in a period of approximately 10 production shifts even though it was approximately 3 months from first to third. I was in discussion with the Mine Manager when he informed me that they had had Frictional ignitions in the past and would have them in the future, “it was a fact of mining”. The mine had not developed any new additional controls since the first ignition and he was going to start cutting cola, in the same face again. I issued the directive by phone from my office in Brisbane at approximately 10.pm.

A number of people who take on the role of SSHR take the role on to help their fellow CMW and are not experienced, not trained by the SSE even though it is one of the SSE obligations, and are victimised at the mine for doing the role. This environment is where it would be very uncomfortable for the SSHRE to have to stop the operations if the proposed process was introduced.

If anything the ISHRs should have the ability to also issue a s166 directive and if the process is to meet the Harmonised OHS or NSW then they should get Pins, as well, which are available to HSR which would assist in not having to stop mining operations but still get risks addressed.

I very strongly disagree with this proposal. I believe this is a lessoning of health and safety standards. The Ex- Chief inspector of Coal Mines stated at the forums that the ISHR’s have threatened operators and misused their powers. There has been 83 directives issued by Industry safety and health representatives of which only 1 of them has had the compliance policy used but the minister has not removed any Industry Safety and Health Representative from their position even though the minister has that power legislated.

The powers which Inspectors are asking to retain should also apply top ISHRs.
Proposed amendments will either:

- clarify the directive to suspend operations that can be given by ISHRs and DWRs for an unacceptable level of risk; or

- alternatively provide that ISHRs and DWRs will have a role in the notification of potential risks but will not be able to issue a directive to suspend operations.

No we do not support the proposals to change the powers of the Industry Safety and Health Representatives/DWR by either of the proposals as mentioned at page 107 of the RIS. On first reading of the proposal to clarify the meaning of the current s167 directive we believe that this is currently clear and has not as such been challenged by anyone.

The “interpretation” put forward at page 108 of the Consultation RIS are in our opinion clearly misrepresented.

“Section 167 of the CMSHA and s.164 of the MQSHA have the following section heading: ‘Directive to suspend operations for unacceptable level of risk’. Section 31 and s.28 of the respective Acts describe what actions are to be taken if there is an unacceptable level of risk at a mine. These sections indicate urgency or immediacy of danger.”

The powers of the ISHR include s119(f) to issue a directive under s167

167 Directive to suspend operations for unacceptable level of risk

(1) If an inspector, inspection officer or industry safety and health representative believes risk from coal mining operations is not at an acceptable level, the inspector, officer or representative may give a directive to any person to suspend operations in all or part of the mine.

(2) The directive may be given orally or by notice.

(3) If the directive is given orally, the person giving the directive must confirm the directive by notice to the person in control of the mine or part of the mine affected by the directive and to the relevant site senior executive.

(4) Failure to comply with subsection (3) does not affect the validity of the directive.

The interpretation is attempting to change the meaning of “acceptable level of risk” which is clearly defined in s29 CMSHA and how the obligation to ensure acceptable level of risk can be discharged at s37 CMSHA.

29 What is an acceptable level of risk

(1) For risk to a person from coal mining operations to be at an acceptable level, the operations must be carried out so that the level of risk from the operations is—

   (a) within acceptable limits; and
   (b) as low as reasonably achievable.

(2) To decide whether risk is within acceptable limits and as low as reasonably achievable regard must be had to—

   (a) the likelihood of injury or illness to a person arising out of the risk; and
(b) the severity of the injury or illness.

37 How obligation can be discharged if regulation or recognised standard made

(1) If a regulation prescribes a way of achieving an acceptable level of risk, a person may discharge the person’s safety and health obligation in relation to the risk only by following the prescribed way.

(2) If a regulation prohibits exposure to a risk, a person may discharge the person’s safety and health obligation in relation to the risk only by ensuring the prohibition is not contravened.

(3) Subject to subsections (1) and (2), if a recognised standard states a way or ways of achieving an acceptable level of risk, a person discharges the person’s safety and health obligation in relation to the risk only by—
   (a) adopting and following a stated way; or
   (b) adopting and following another way that achieves a level of risk that is equal to or better than the acceptable level.

The CMSHR at the start of Chapters 2 r5, Chapter 3 - Surface mines, r102 and chapter 4 Underground Mines - r148 states that the Chapters “prescribes ways of achieving an acceptable level of risk at a coal mine” and goes further by stating “a person may discharge the persons safety and health obligation mentioned in the chapter only by following the prescribed way”. Hence if the stated way has not been followed then it would be possible to have a belief that the risk from the relevant coal mine operations is not at an acceptable level.

r5 Ways of achieving an acceptable level of risk

(1) This chapter, other than sections 47(3) and 52(1), prescribes ways of achieving an acceptable level of risk at a coal mine in the circumstances mentioned in the chapter.

(2) However, this chapter does not deal with all circumstances that expose someone to risk at a coal mine.

(3) A person may discharge the person’s safety and health obligation in the circumstances mentioned in this chapter only by following the prescribed ways.

Editor’s note—
See section 34 (Discharge of obligations) of the Act for the penalty for failing to discharge the obligation.

31 What happens if the level of risk is unacceptable

(1) If there is an unacceptable level of risk to persons at a coal mine, this Act requires that—
   (a) persons be evacuated to a safe location; and
   (b) action be taken to reduce the risk to an acceptable level.

(2) Action to reduce the risk to an acceptable level may include stopping the use of specified plant or substances.

(3) The action may be taken by the coal mine operator for the mine, the site senior executive for the mine, industry safety and health representatives, site safety and health representatives, coal mine workers, inspectors or inspection officers.

These sections do not in our opinion indicate urgency or immediacy of danger, rather require that all Coal Mine workers are protected and indeed meet the objects of the CMSHA (s6) “the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level”.
Therefore there is no ambiguity suggesting that s167 CMSHA can be proactively used to reduce risk. Simply put s167 Directive allows for the suspension of operations where there is a belief that operations are not at an acceptable level of risk.

During the review undertaken by the Coal Mining Safety and Health Advisory Committee (CMSHAC) (2003) and after discussions between the Inspectorate and the ISHRs it was proposed that the s166 directive be considered for issuance by ISHRs as well as Inspectors. There was also later debate as to the introduction of Provisional Improvement Notices (PINs). These initiatives would have indeed been able to proactively reduce risk without in most cases stop operations production.

**Mackie document August 2006 to CMSHAC**

“After reviewing the provisions in the legislation stated above it is the writer's opinion that serious consideration should be given to including provisions in mining safety and health legislation empowering industry safety and health representatives and site safety and health representatives to issue PINS and following the example in the majority of other occupational safety and health legislation provide inspectors with the power to review pin. ‘

27 06 2007 draft MOU on issuing directives working Group

ISHR and Inspectorate representatives met during 2003 and again in 2007 to develop a MOU for issuing directives, notification of directives to the other party and a protocol to be used where possible and practical when a directive review was applied for. The reason for only including the ISHRs and Inspectorate was that they are the only persons with the power to issue such directives. To date this has never been finalised.

Amending the words of s167 (as proposed at para 4 of page 108-RIS) “to be clearly confined to when the risk poses a danger that is urgent, imminent or immediate” is clearly a diminution of power of the ISHR/DWR, and are already powers available to Site Safety and Health Representatives (SSHRs) under s101 CMSHA and which some SSEs have abused in the past by using s103 and restarting operations when “they” believed that the risk was acceptable.

**101 Stopping of operations by site safety and health representatives**

(1) This section applies if a site safety and health representative reasonably believes a danger to the safety or health of coal mine workers exists because of coal mining operations.

(2) The safety and health representative may, by written report to the site senior executive stating the reasons for the representative's belief, order the suspension of coal mining operations.

(3) If the site safety and health representative reasonably believes there is immediate danger to the safety and health of coal mine workers from coal mining operations, the representative may—
(a) stop the operations and immediately advise the supervisor in charge of the operations; or
(b) require the supervisor in charge of the operations to stop the operations.

(4) The site safety and health representative must give a written report to the site senior executive about the action taken under subsection (3) and the reasons for the action.

103 Site senior executive not to restart operations until risk at an acceptable level

The site senior executive must ensure that the coal mining operations stopped under section 101 are not restarted until the risk to coal mine workers from the operations is at an acceptable level.

It is important to note that the Inspectorates own RIS at page 106 -107 states

**Proactive inspector powers**

The non-core policy consultations resulted in the position that New South Wales and Western Australian regulators intended to enact the powers to give and way of giving directives based on what currently exists in the CMSHA and MQSHA. These Queensland designed, risk based directives have proven very effective in enabling the Queensland inspectorate to anticipate and proactively require correction of safety and health management system problems or latent risks before they continue to develop into imminent or immediate risks, as well as more imminent problems or risks. Analysis of workplace disasters by well known academics such as Professor James Reason and Professor Andrew Hopkins have highlighted the importance of proactively addressing latent system problems because mining disasters often cannot be avoided at the imminent or immediate stage of realisation.

The Model Act threshold for regulator action of imminent or immediate is too high in a mining context due to the nature of the hazards and responding at a more anticipatory stage is required.

*If this general power is implemented by New South Wales and Western Australia, it is proposed it will be an addition to Queensland's current proactive powers rather than a replacement of any of them.*

Whilst we agree with this section, and have supported this proposal to retain the directives section of the current Queensland CMSHA (*Part 9 Division 5 Directives by inspectors, inspection officers and industry safety and health representatives*) throughout the Harmonisation review, it is concerning that with some parties raising issues about ISHRs, that the proposals contained in the RIS do not even retain the option of the current legislative standard enabling ISHRs to issue an unchanged s167 directive if necessary.

**RIS page 107**

*alternatively provide that ISHRs and DWRs will have a role in the notification of potential risks but will not be able to issue a directive to suspend operations.*

The above alternative is clearly aimed at reducing the effectiveness of the ISHRs to that of a SSHR but with the limit that the ISHR will not be working on the mine site at all times when a risk may be imminent or immediate.
During the development of the current CMSHA and Regulation and in fact prior to that, as a result of the last Moura disaster (Moura No2-1994) the Queensland mining industry changed to a tripartite approach to the development of the style and content of the legislation. This is shown by the consultation and cooperation process throughout the legislative instruments. That process has not been utilised to date in the current reviews.

The legislation also is based, to date, on Safety and Health Management Systems and this required a different approach from those overseeing the safety provisions. To this end the Inspectorate and their officers as well as the ISHRs are mainly driven by the systems approach to ensure “acceptable level of risk” and hence the powers of the ISHRs allow for the review of SOPs, PHMPs and the Safety Management Systems. This means that an ISHR will either visit the mine or may have discussions with the SSE and other CMW and may need to take some documents, that are very detailed, away to review and the outcome may be that they then have a belief that the systems are not ensuring acceptable level of risk. Another option is that the ISHR has received a report of a HPI and with their knowledge of the industry together with additional information provided can make a decision that the operation is not at an acceptable level of risk.

Hence again the need for ISHRs to retain the current s167 directive power which can be utilised where they have a belief that the risk is not at an acceptable level to protect coal mine workers.

Since the introduction of the current CMSHA in full on 16th march 2001 the persons holding the position of ISHR, have given a s167 directive on approximately 80 occasions.
Initially these were for some one off situations at mines where they believed that the risk was not at an acceptable level, and we could not get the SSE to understand/accept the risk levels. This has changed to where the majority of the directives have been at a systems level. As well the ISHRs have given in excess of three times that many s121 for inadequate or ineffective safety and health management systems. A number of which have been referred to an Inspector when the ISHR has not been satisfied with the SSEs actions to address the same.

A number of SSE’s or in most cases the Operator, have applied for a review of s167 directives, this is the last 4 years has been almost singularly one company or its associated companies, BHP Billiton. They have also been the mines which have attempted to have SSHRs and ISHR removed from their elected positions over alleged misuse of safety and Health powers.

To date under the current CMSHA there has been five investigations by the Inspectorate into ISHRs actions three of which the originator of the request has
asked for the removal of appointment as an ISHR. To date since the right to have ISHRs/DUIs in 1938 there has not been one ISHR removed by a Minister.

The minister has the power at s112 to end an appointment if the Minister considers that the representative is not performing the representative’s functions satisfactorily.

112 Termination of appointment
(1) The Minister may end the appointment of an industry safety and health representative by notice if the Minister considers the representative is not performing the representative’s functions satisfactorily.
(2) The notice must contain the Minister’s reasons for ending the appointment of the industry safety and health representative.

The directives issued by ISHRs can be broken into seven different type groups:

- **s167 directive** issued by ISHR and SSE complies with the directive and achieves acceptable level of risk

- **s167 directive** issued by ISHR to mines with similar equipment and after mines have implemented interim controls there has been an industry forum to determine engineering controls for the hazard.
  Example: 3 August 2004 – all underground mines - Dalliston – protection of electrical cables from alternator on Flameproof Diesel plant

- directives issued at a mine when the ISHR has attempted to get the SSE to address a matter where the ISHR believes that acceptable level of risk is not being achieved, and after issuing the s167 the ISHR has spoken with an Inspector and the Inspector indicates that they will withdraw the s167 and issue a s166 which while still ensuring the issue is addressed effectively allows work to continue under stated conditions. In almost all of these occasions the ISHR and Inspector are in agreement and in fact if the ISHR had the power to issue a s166 he would have done so instead of the s167. These are now getting less frequent.
  Example: 23 July 2011 – Goonyella Riverside – Dalliston – One Man Dragline Operations – CIOCM left directive stand but requested the mine have an independent engineering study

- **S167 directive** issued by an ISHR and almost immediately the SSE or Operator has requested (usually by a phone call) to the CIOCM that the directive be withdrawn. After being instructed about the correct process (s175 application for review). The information required to review the directive is supplied to the CIOCM, who discusses the subject of the directive and on most occasions there is agreement on the contents and type of the new directive issued.
  Example: 23 July 2011 – Goonyella Riverside – Dalliston – One Man Dragline Operations – CIOCM left directive stand but requested the mine have an independent engineering study
conducted and then conduct a risk assessment and develop a work process to be used as a trial period. To date the mine has not completed the requested actions and the directive still stands.)

- **S167 directive issued by an ISHR and almost immediately the SSE or Operator has requested (usually by a phone call) to the CIOCM that the directive be withdrawn almost immediately and with little or no discussion with ISHR.**
  
  Example:
  18 June 2004 Grasstree -Vaccaneo - entrances from surface – Inspectorate let mining recommence with no replacement directive and after a lengthy wait and Supreme Court decision the ISHR directive was reissued and the mine made to be bought into compliance.
  25 February 2011 Goonyella Riverside –Gilbert- stopping shotfiring activities - Inspectorate withdrew directive, Explosives Inspectorate audit list number of actions which should be addressed, - within 5 months the mine has 5 other HPI of a similar nature. These may have been prevented if the original s167 directive was investigated and acted on effectively.

- **s167 directive has been issued by ISHR even though Inspectorate present or ISHR has notified Inspectorate of their intent to issue a s167 if no action coming from Inspector**
  
  Example:
  2 February 2007 – Cook Colliery – Dalliston – stop work in potential Blast path at mine surface during underground heating. ISHR and Inspectorate were at the mine assisting with serious mine heating event.
  24 November 2010 – Grasstree – only days after Pike River explosion an ISHR has to encourage an Inspector to stop operations at Grasstree after the mine had a Frictional Ignition and had not determined the cause and hence additional controls had been implemented to prevent a further incident yet mining had recommenced in the same face. Inspector then stopped the operation.

- **s167 directive has been withdrawn after complaint from an Operator and the Inspectorate investigation has caused the use of the Mines Inspectorate Compliance Policy**

There have been a number of directives where the ISHR has spoken to a Mines Inspector and then issued a s167 directive, and after the mines has asked for a review of the directive the Inspector has either asked the ISHR to withdraw the directive and the Inspector has issued a s166 directive in its place requiring the mine to take action to address the risk but allowing operations to continue, or the Inspector simply has issued a s166, withdrawing the ISHRs directive at the same time.

Until recently (the last 3 to 4 years) requests to withdraw directives have not been a common occurrence.

There has been only one occasion from over 80 directives, where a s167 directive has been withdrawn and the Inspectorate investigation has caused the use of the
Mines Inspectorate Compliance Policy actions, and a level 4 compliance meeting was held.

From the above examples we believe that it clearly demonstrates that the ISHRs have used the power of the s167 directive in a manner which protects coal mine workers and assists the industry in achieving acceptable level of risk. The power and form of the directive should remain as it currently stands.

There has been some suggestion that it may not be an appropriate action for a Minister to withdraw an appointment of an ISHR. This review of the legislation may be an appropriate time, with the request to also provide an appeal process for anyone who has been charged with an offence under the mining legislation to be allowed to appeal to a further court jurisdiction, that if the Minister believes there is a case to answer where an ISHR has allegedly abused his powers that the Minister may refer this to a similar court process where evidence can be put to decide the allegation and make a decision.

Queensland Mineworkers have had the right to appoint two of their number, which has subsequently been changed to elect, to represent them in safety matters. They had the powers to stop “all operations in any dangerous place”. These powers were originally under the 1881 Mines Regulation Act and then the 1889 Mines Regulation Act. The latter was changed after the Mount Mulligan Disaster recommendations were implemented and the legislation governing Coal and Metalliferous mines was split in 1925.

From that time (1925) coal mine workers were empowered to appoint “the workman employed in any mine may appoint two of their number or any two persons” (miners Inspectors), this power allowed for the first of the now Industry Safety and Health Representatives, as the then Queensland Colliery Employees Union of Employees (QCEUE), District Secretary or President could fill such position from time to time.

In 1938 “the Coal Mining Acts Amendment Act of 1938” added a section specifically allowing for the election and appointment of two Miners Check Inspectors by the QCEUE (union), paid by the union and with powers similar to the Miners Inspectors. The power for the Minister to “terminate any such appointment if they no carrying out their duties in a satisfactory manner” was also in the Act.

The number of DUls able to be elected was changed in 1984 to three. With the introduction of the Coal Mining Safety and Health Act 1999, introduced on 16th March 2001 the title was changed to Industry Safety and Health Representative (ISHR)(s109 CMSHA)
109 Appointment of industry safety and health representatives

(1) The union may, after a ballot of its members, appoint up to 3 persons to be industry safety and health representatives.

(2) The persons appointed must be holders of a first or second class certificate of competency or a deputy’s certificate of competency.

(3) The appointment must be for 4 years.

and the inclusion that the ISHR must work full time in the capacity of ISHR and not do any other industrial type work was added to the legislation

110 Industry safety and health representative to work full-time

An industry safety and health representative must work full-time in that capacity performing the functions of an industry safety and health representative.

The power of the minister to an appointment

The power to issue a directive similar to s166 would at times make the necessity to issue a s167 and stop work at time less likely.

166 Directive to reduce risk

(1) If an inspector or inspection officer reasonably believes a risk from coal mining operations may reach an unacceptable level, the inspector or officer may give a directive to any person to take stated corrective or preventative action to prevent the risk reaching an unacceptable level.

(2) The directive may be given orally or by notice.

(3) If the directive is given orally, the person giving the directive must confirm the directive by notice to the person in control of the mine or part of the mine affected by the directive and to the relevant site senior executive.

(4) Failure to comply with subsection (3) does not affect the validity of the directive.

174 Directives

(1) If an inspector, inspection officer, or industry safety and health representative has given a directive, the inspector, officer or representative—
   (a) must enter it in the mine record as soon as reasonably practicable after giving it; and
   (b) must state the reason for the directive in the mine record.

(2) A person to whom a directive is given must comply with the directive as soon as reasonably practicable.

   Maximum penalty—800 penalty units or 2 years imprisonment.

(3) The site senior executive must enter in the mine record the action taken to comply with the directive as soon as practicable after the action is taken.

   Maximum penalty—40 penalty units.

(4) The site senior executive must make copies of directives available for inspection by coal mine workers.

   Maximum penalty—40 penalty units.

(5) A directive remains effective until—
   (a) for a directive by an industry safety and health representative—it is withdrawn in writing by the representative or an inspector; or
   (b) for a directive by the chief inspector—it is withdrawn in writing by the chief inspector; or
   (c) for a directive by an inspector other than the chief inspector—it is withdrawn in writing by the inspector or another inspector; or
(d) for a directive of an inspection officer—it is withdrawn in writing by the inspection officer or an inspector; or
(e) for a directive by an industry safety and health representative, an inspection officer or an inspector and not otherwise withdrawn—the chief inspector varies or sets aside the directive after reviewing it under subdivision 4; or
(f) the Industrial Court stays, varies or sets aside the directive.

175 Application for review
A person who is given a directive from an inspector (other than the chief inspector), inspection officer or industry safety and health representative may apply under this division for the directive to be reviewed.

176 Procedure for review
(1) The application must—
   (a) be made in writing to the chief inspector; and (b) be supported by enough information to allow the chief inspector to decide the application.
(2) The application must be made to the chief inspector within—
   (a) 7 days after the day on which the person received the directive; or

178 Stay of operation of directive
(1) If a person applies under this division for a directive to be reviewed, the person may immediately apply to the Industrial Court for a stay of the directive.

(6) However, a directive under section 167 must not be stayed.

32 Cooperation to achieve objects of Act
(1) This Act seeks to achieve cooperation between coal operators, site senior executives and coal workers to achieve the objects of the Act.
(2) Cooperation is an important strategy in achieving the objects of the Act and is achieved—
   (a) at an industry level by—
      (i) the establishment of the coal mining safety and health advisory committee under part 6; and
      (ii) the appointment of industry safety and health representatives under part 8; and
   (b) at coal mine level by—
      (i) the election of site safety and health representatives under part 7; and
      (ii) the process of involving coal mine workers in the management of risk.
15. election process for site safety and health representatives (see RIS pg xiii, 110)

Do you agree with the proposed change to the election process? If not, what changes do you suggest and why?

I disagree with the proposal. The election of the SSHR’s should be done by CMW’s as it is their representative for matters of safety and Health. These positions have been in the legislation since 1925 and there are very few issues with CMW’s conducting the election.

If the industry was really concerned with attempting to get harmonisation where possible then here is a simple area where it could be achieved.

The National harmonised WHS draft legislation has a process for election of HSRs and the NSW mining legislation has a similar process, where workers can ask either the employer or a union to assist in the conduct or “their” safety representative.

If the SSE is meeting their obligations then the main role for the SSHR would be for consultation and conducting inspections and there would be no need for conflict and hence no reason for the SSE to have any role in the election process.

16. fitness for work (coal mines) (see RIS pg xiii, 103-106)

Do you agree with the proposed approach for fitness for work? If not, what changes do you suggest and why?

I disagree with the proposal.

Giving the SSE unfettered right to decide a matter for criteria of assessment (Drugs, Fatigue, and Physical or Psychological impairment) without the agreement of the majority of CMW’s is intrusive onto person’s lifestyle choices, health choices and ability to be treated by a doctor of their choice. This is not like a hazard at the mine and need to be treated differently than a mine hazard because of the intrusive nature of this issue.

There have been a number of court decisions in regards to both this and medicals and as there is now legal precedence there appears no need for change.

When the legislation was developed in 1994 the unions participated in successfully having the first OHS legislation which had such clauses. The parliamentary scrutiny committee was insistent that where any tests or assessments are allowed to be imposed on workers then the majority of workers must agree to the assessments. (see minutes of CHSHAC and the regulation working group for Fitness for work)

I also agree and support the CFMEU submission on this matter.

17. issues related to mine plans for abandoned mines (see RIS pg xiv, 102)

Do you agree with the proposed approach? If not, what changes do you suggest and why?
I agree with the proposal. If the mine becomes abandoned the receiver should be required to provide plans to the department if the company has not complied.

18. removing the requirement for coal mines to submit mine plans at the end of each calendar year (see RIS pg xiii)

Do you support removing this requirement? If not, what changes do you suggest and why?

I do not support this proposal. The department of natural resources and mines is required to keep mine plans for all mines in the state. This may be the Department and not necessarily the Inspectorate.

I support the Mines surveyors submission on this matter.

19. refocusing the Coal Mine Workers’ Health Scheme (see RIS pg xiii)

Do you support the refocusing of the Coal Mine Workers’ Health Scheme? If not, what changes do you suggest and why?

I disagree with the proposal. I am of a belief that the current system is adequate and effective in addressing health assessment requirements for the industry.

There has been a number of court cases on these matters and in my belief there has only been two occasions where the s48a third medical assessment has been necessary,

I was part of the committee that changed the original medical scheme from a order to regulations and at the time it was agreed that the regulation would replace the order to make this easier and in one common legislation.

The change is another business /financial issue and should not be considered.

The Inspectorate have received a large number of supposed medicals which were not conducted in accordance with the legislation. The process should be to stop these medicals being conducted and purported to be actual medicals for the purpose of the legislation, not change the system which at least ensures that workers have a regular medical for fitness for work of give away their legal rights.

I support the CFMEU submission on this matter.

20. increasing the number of industry safety and health representatives (see RIS pg xiii)
Do you agree with the proposal under consideration to increase the number to four? If not, what changes do you suggest and why?

I agree with the proposal. With the increase in CMW’s and Coal Mines in the industry I am of a belief that this growth warrants an increase in ISHR’s to be able to cover this increase, but this will be useless if the current powers and functions are changed at all including what s167 currently means.

21. manufacturers and suppliers to inform the Mines Inspectorate in the event of a hazardous aspect or defect in equipment supplied

Do you agree with the proposals? If not, what changes do you suggest and why?

I agree with the proposal manufacturers and suppliers should have obligations to inform the inspectorate of a hazardous aspect or defect in their equipment.

22. implementing Ombudsman recommendations about a confidential complaints system.

Do you agree with the proposal to develop a confidential complaint system similar to that in the aviation industry? If not, what changes do you suggest and why?

I agree with the proposal. Confidentiality is important when making a complaint regarding safety and health without fear of reprisals.

Do you have any other suggestions regarding existing legislation that if amended or deleted would improve the safety and health of mineworkers?

I would like to list some of my experience that has I believe enabled me to put forward the information in this submission and also point out that while there may be a number of people who have submitted submissions to the RIS, a lot of these submissions are made on a purely financial or business reasons and that the history or “cooperate memory” which has often been referred to is unfortunately sadly missing from the debate.

I hope that the experience gained from my short part of Queensland mining history assists in retaining some critical aspects of our legislation which has been written in blood.

I was on the development of the current Coal Mining Safety and Health Act 1999 and Regulation 2001, as well as the National Harmonisation process which lead to the
Core and Non core drafting instructions, and have been a member of the Coal Mining Safety and Health Advisory Council since its inception in 1999. I am the only representative of the CMSHAC who was on the development of the current legislation and as well I sit on the Queensland Board of Examiners and have been on the Skills DMC and previous bodies related to training since the inception of the National Coal training packages.

I was also fortunate enough to be selected to go on a study tour of mining, off shore oil and nuclear industries in USA, Canada, England and Scotland in 2003 with the Mines Department and industry.

I have been an ISHR/ District Union Inspector for almost 20 years and was on the Moura No2 investigation team an sat through the subsequent 65 days of inquiry as well as being on 2 of the 5 Moura Implementation committees. I have had the unfortunate responsibility in conducting investigations, sat on Mine Warden reviewer panels, Inquiries and Coronial Inquiries for in excess of 40 mine workers deaths. This is in excess of 2 for every year for my career in full time mine safety and health (20 years).

There have been a number of reviews of the Inspectorate, the Queensland Coal Mining Act and Regulations over the last decade or more and sub committees set up by the CMSHAC which have never seen the light of day and therefor in my opinion are potentially putting the safety and health of Coal Mine Workers at risk. The reviews and discussion documents which were part of these shoul receive strong weighting when deciding the changes to the Queensland mining legislation. We pride ourselves as having the best safety and health legislation in the world so let us not forget at what cost it came in the name of business improvement?

The competencies for Inspectors (which was contained as recommendations in the last Inspectorate review) should also be considered. As there are a number of “Inspectors” who have ability to make decisions outside their area of expertise. The legislation amendments for positions such as Authorised officers were agreed but never implemented in legislation and as such s126, 127 and 127A should be reviewed.

The Moura No2 recommendations on Maintenance of competency and that “tickets” should not be for life but between 3 to 5 years has never been addressed. The CMSHAC and BOE have attempted to address this on a number of occasions but there appears to be some difference in parties opinions on what this should be depending on how senior a management position one holds. The other difference is in terms of perception between Maintenance of Competency (MOU) and Continuing Professional Development (CPD).

The powers of the Board of Examiners to remove a Certificate of Competency issued buy them is in some opinion covered by section 24AA of the Acts Interpretation Act, this and other powers of the BOE were left out when the legislation changed in 1999.

**General comments**

To assist us in processing you general comments, could you please reference the page number of the QMSF Consultation RIS document you wish to refer too and insert your comments adjacent to the page number.
The normal process for development of mining legislation especially coal mining legislation since 1992 has been through genuine tripartite process and debate and that is why the Queensland mining legislation is recognised as world’s best. The process to do this review should be the same.

It has been shown that the last review when given totally to the parliamentary draftsperson had wrong meanings and had to be not applied until it could be addressed, this could be harmful if it happens again.
You can submit this form

Online

You can submit your feedback online using the online version of this form located on the Get involved website <https://www.getinvolved.qld.gov.au>.

By mail

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Where possible, submissions should be lodged in Microsoft Word or other text based formats.

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E-mailed responses should include the words “Mine Safety RIS” in the subject line.

Feedback on the Mine Safety National Framework Regulatory Impact Statement document should be provided online, by mail, fax or e-mail to be received by the Department by no later than 5 pm XX XXXX 2013.