



West Wallsend Colliery

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1 INTRODUCTION

In May 2013, Glencore and Xstrata merged to create one of the largest natural resource companies in the world. The Glencore Xstrata coal business now manages a combined 150Mt of production annually across assets in Australia, South Africa and Columbia.

West Wallsend Colliery is an underground coal mining operation located in the Newcastle Coalfields near Lake Macquarie. West Wallsend Colliery is operated in conjunction with the Macquarie Coal Preparation Plant (MCP), located adjacent to the mining operation, which handles and processes run of mine (ROM) coal received from West Wallsend Colliery.

West Wallsend Colliery and the MCP are operated by Oceanic Coal Australia Limited (OCAL) on behalf of Macquarie Coal Joint Venture. OCAL is the majority shareholder in the Macquarie Coal Joint Venture with 70% ownership. Other shareholders include Marubeni Coal Pty Ltd (17%), OCAL Macquarie Pty Ltd (10%) and JFE Minerals (Australia) Pty Ltd (3%). OCAL, which also owns OCAL Macquarie Pty Ltd, is wholly owned by Glencore Coal Assets Australia (GCAA).

GCAA has been involved in the harmonisation process and will continue to advocate continuous improvement within the regulatory framework.

We recognise that it is important for legislation to achieve a balance between prescriptive and enabling provisions (generic risk based standards and performance standards) to effectively direct the management of work health and safety, with prescription focused on high consequence, low probability risks – **lessons of the past**, and enabling provisions on lower consequence events.

The draft Work Health and Safety (Mines) Regulation 2014 (herein referenced as the draft), has, in areas attempted to move towards a balanced approach, however, still contains areas of prescription that are excessive. The specific areas have been addressed in the submission below.

2 KEY POINTS

2.1 Legislative Framework

We have found that the diagram detailing the framework of WHS legislation in the Discussion Paper for the draft regulation (page 13) is not consistent with clause 4 in both the WHS (Mines) Act 2013 and the draft regulation. We have interpreted from these clauses that a more accurate representation of the framework would be that set out below in Figure 2.

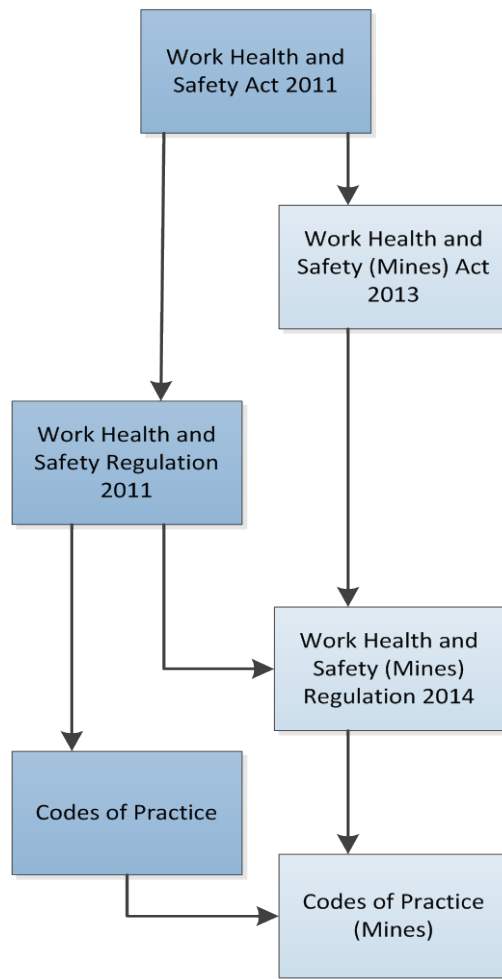


Figure 1 - NSW WHS Legislative Framework - Mines

We have also interpreted from the WHS regulation that in the case of any inconsistency between this regulation and the draft mines regulation that the WHS Regulation prevails (*Refer Work Health and Safety Regulation 2011 – Clause 14 Inconsistencies between provisions - If a provision of any document applied, adopted or incorporated by, or referred to in, this Regulation is inconsistent with any provision in this Regulation, the provision of this Regulation prevails*).

Action: Confirmation is required regarding the above representation of the framework and the interpretation regarding inconsistencies is accurate.

2.2 Document Structure

The structure of the draft is difficult to reference due to the multiple locations on topic and risk areas (e.g. ventilation). As the general structure is based around *all mines, all coal mines* and *all underground mines*, information on a risk/issue must be read from numerous parts of the document.

This approach has led to duplication and in some instances contradiction. .

For example, Ventilation requirements are prescribed in:

- Part 2, Division 1, Subdivision 2 – Safety Management System, Clause 14 – Content of Safety Management System
- Part 2, Division 5, Subdivision 2 – All Underground mines – air quality and ventilation
- Part 2, Division 5, Subdivision 3 – Underground Coal Mines, Clause 72 – Ventilation, Clause 73 – Control and monitoring of methane levels, Clause 74 – Gas monitoring, Clause 76 – requirements if air quality or safety standards not met
- Schedule 1, Clause 8 – Spontaneous Combustion
- Schedule 7, Clause 5 (3) – Procedures in the event of the ventilation system failing
- Schedule 10, Part 1, Clause 2 (7) & (8) – Ventilation Auditor & Ventilation Officer
- Schedule 12, Part 2, Division 3, Clause 6 – Ventilation system – further requirements, Clause 8 – Sealing

The draft should be set out in a manner that considers the end user, enabling the public to find all the relevant detail needed to understand the implications of the regulation (see Council of Australian Governments – Best Practice Regulation – October 2007).

The use of the term “person” in clause 6 Appointment of Mine Operator is also confusing. This was clarified at the industry meeting on the 26th June 2014 to be a company not an individual, but is not consistent with plain language and the understanding of the general public.

Recommendation:

Structure the regulation around topic and risk areas with sub headings/clauses under these for each mine type (ie All, Underground Mine, Underground Coal Mine).

Remove the term person, as referred to in Clause 6 and replace with company.

2.3 Enforcement

There is significant change in the enforcement provisions from previous Coal Mining Legislation and, although we understand this aligns with the approach in the WHS Act 2011 and WHS Regulations 2011, the concern is raised as to whether this will modify the approach of the Regulator to enforcement in relation to coal mines.

Previously, enforcement was prescribed in Part 13 – Miscellaneous, Division 1 – Enforcement of the Coal Mines Health and Safety Act 2002. This allowed for proceedings to be brought before a court for offences under the provisions of the Act and Regulation. The draft regulation prescribes penalties for specific clauses, and given the large number of clauses listed in the WHS Regulation 2011 for penalty notice offences, fines can be issued for non-compliance within these clauses.

We are concerned that the approach of assisting the industry currently applied by the regulator will change to role of policeman. We believe that the assisting approach is far more conducive to continuously improving safety performance of our industry, as has been demonstrated over the last decade. This approach has allowed our operations to develop valuable relationships with inspectors, that has led to cooperation on the development of solutions to issues/hazards and the prevention of repeat incidents.

Summary: It is acknowledged that the issuing of penalty notices by Inspectors was raised at the industry meeting on the 26th June 2014 where assurance was provided that the policy for prosecutions/enforcement by the Regulator would not change.

2.4 Codes of Practice and Other Regulatory Instruments

We acknowledge that the Discussion Paper for the draft outlines the process for the development of Codes of Practice and that each code includes “How to use this Code” which explains mandatory and non-mandatory requirements. However we would like to confirm that, like the Queensland Recognised Standards, the Codes of Practice are a guide to achieving acceptable risk and that this may be achieved by means other than compliance with the Codes of Practice.

S37 (3) of the Queensland Coal Mining Safety and Health Act 1999 requires that “...if a recognised standard states a way or ways of achieving an acceptable level of risk, a person discharges a 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”. WWC supports this approach.

It is our understanding that existing gazettal notices will be repealed upon the implementation of this regulation and the Coal Industry Act 2001 will remain and does not form part of this review.

However, concerns still remain in regards to duplication, and potential conflict with Orders made under the Coal Industry Act 2001.

Confirmation Required: Codes of Practice are a guide to achieving acceptable risk and that this may be achieved by means other than compliance with the Codes of Practice.

Recommendation: Review Orders made under the Coal Industry Act for relevance. Orders should be amended or revoked where duplication and/or conflict exists.

2.5 Statutory Positions

2.5.1 Site Senior Executive

WWC is not opposed to the inclusion of the Site Senior Executive (SSE) as a key statutory position, however, we believe that this position should be the most senior person based at an operation. The following responsibilities should also be reflected as part of the SSE role:

- Develop and implement a safety and health management system;
- Develop, implement and maintain a management structure for the mine.

We are concerned about the competency requirements that will be prescribed for Site Senior Executive and would like to participate in establishing these requirements.

2.5.2 “Control and Manage”

There has been modification to the statutory functions of Mining Engineering Manager, Electrical Engineering Manager, Mechanical Engineering Manager, Ventilation Officer and Undermanager in that they must now control and manage the activities....

The descriptors control and manage (the activities) infer that this position is required to directly oversee all work and personnel. It is more appropriate that these roles establish and monitor systems and standards within their discipline rather than control and manage.

Part 2, Division 1, Subdivision 2 – System Management System allow a mine operator to determine the management structure that will effectively manage health and safety at that mine. By requiring these positions to control and manage limits this flexibility.

Recommendation: For the statutory functions of Mining Engineering Manager, Electrical Engineering Manager, Mechanical Engineering Manager, Ventilation Officer and Undermanager, modify the function to “establish and monitor standards and systems.....”.

Alternately, these functions could be removed and a clause added in Part 2, Division 1, Subdivision 2 – System Management System that requires an operator to detail how the management structure will control and manage mining activities.

2.5.3 “Under the Direction of”

A number of statutory positions now include a new function “*under the direction of...*” (Refer Undermanager, Deputy and Open Cut Examiner). This issue was raised at the industry meeting on the 26th June 2014 where it was confirmed that “*under the direction of*” does not require an immediate reporting structure, rather, these positions must sit within the same stream. This was contradicted at a meeting conducted by DTI with the Underground Coal Mechanical Engineers. It is difficult to develop a firm position on this issue when conflicting views have been received from the regulator.

We are concerned that these functions will limit the flexibility to establish management structures that meet the needs of all operations (large and small, simple and complex).

Until confirmation is received in regards to the intent of “under the direction of”, WWC is unable to provide feedback on this issue.

Action: Confirmation is required regarding the interpretation of “under the direction of” in view of WWC providing further feedback on this matter.

2.5.4 Electrical and Mechanical Trades

The draft proposes that electrical and mechanical trades are classified as statutory positions. Maintenance work is not a statutory function, it is an operational activity. In the previous legislation it was simply a function that had specific minimum competency requirements (CMHS Regulation 2006 - Clause 162) that were stipulated in Part 9 of the CMHS Act 2002 – Competence Standards.

Recommendation: WWC support minimum competency requirements for these positions which should be stipulated in Part 2 Division 7 – Information, Training and Instruction of the draft. WWC do not support trades as statutory positions.

2.5.5 Practicing Certificates

WWC supports the introduction of practicing certificates and believes they should be valid for 5 years. We also believe that where an individual has subordinate certificates (e.g. mine manager, undermanager and deputy), maintenance of the primary certificate should maintain the subordinate certificate. We are interested in the process for maintaining (and re-gaining) certificates and would like to be involved in the development of this process.

Recommendation: Practicing Certificates are valid for 5 years and certification includes subordinate certificates.

2.6 Principle Mining Hazard Management Plans

2.6.1 Workers' Safety Role

WWC do not believe this role is required, the intent of this clause (119) should be met by including a requirement to involve a cross section of the workforce in the identification of principal mining hazards, the consideration of control measures for those hazards and the development of principal control plans.

Recommendation: Remove reference to Workers Safety Role and add the identification of principal mining hazards from clause 119(a) to clause 120, clause 119 (b) & (c) are covered by clause 120 (b) & (c), add clause 119 (d) to clause 120

2.6.2 Health Control Plan

WWC considers Physical and Psychological Impairment risk to be an important issue in relation to fitness for work that appears to have been omitted from the draft. This is an emerging issue for the industry that cannot be ignored and further recognition of this should be considered.

Schedule 2, Clause 1 describes the matters to be addressed when developing a Health Control Plan. Point (b) within this clause appears to limit these plans to fitness for work issues associated with fatigue, extremes of temperature, moisture content of air and intoxication by alcohol or drugs. Although not included in the draft, WWC would not support a requirement to seek "agreement" on matters included in Health Control Plans.

Recommendation: Schedule 2, Clause 1 (b) is expanded by replacing "including" with "including but not limited to" or an addition of "Physical and Psychological Impairment".

3 SAVINGS AND TRANSITIONS

The following table identifies the savings and transitions that WWC does not see as appropriate, along with suggested modifications:

Clause or Section	Requirement	Transitional Period	Issue	Recommended Period
Clause 3	Safety Management Systems	6 months	<p>Requires the review of the entire Safety Management System, all principal hazards and their controls, principal controls and emergency management systems.</p> <p>Consultation will be required on all these system reviews, in addition, training on any changes will need to be facilitated.</p> <p>This may involve plant, equipment and infrastructure modification or purchase (e.g. procedures for rehydration and communication in an irrespirable atmosphere)</p>	2 years
Clause 4	Contractor Health and Safety Management Plan	6 months	<p>This will require all contractors to review or develop their HSMP.</p> <p>They will need to consult with their workers and provide appropriate training.</p> <p>Operators will need to review all these plans.</p> <p>Operations may have as many as 100 HSMPs to review</p>	2 years
Clause 6	Ventilation Systems – Further Requirements	18 months	<p>0.3m/s is a significant change in ventilation requirements and will involve modification to a mines infrastructure that may have considerable cost.</p>	3 years
Clause 8	Sealing	2 years	<p>This will require major infrastructure changes at underground mines and will involve significant expense (e.g. remote sealing of each entrance)</p>	4 Years
Clause 10	Self-rescuers	12 months	<p>This may involve the purchase of new equipment that will result in</p>	2 years

Clause or Section	Requirement	Transitional Period	Issue	Recommended Period
			systems requiring review, consultation and retraining of employees and contractors.	
Clause 25	Principle Control Plans		Matters to be addressed in regards to the development of Principle Control Plans are extensive which will require some time to review and then subsequently implement.	2 years
Clause 30	Seismic Activity	6 months	This is a new requirement that may involve extensive investigation and/or studies Systems will need to be developed Consultation will need to be conducted with workers Training will need to occur New equipment may be required	4 years
Clause 31	Ventilation Control Plan	2 years	This will require major infrastructure changes at underground mines and will involve significant expense	4 years
Clause 32	Post Incident Monitoring	2 years	This will require major infrastructure changes at underground mines and will involve significant expense	4 years
Clause 69	Sealing	Not addressed	This will require major infrastructure changes at some of our operations and will involve significant expense.	2 years

4 DETAILED FEEDBACK

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
Part 1 - Preliminary					
Part 1	3	Definitions	Yes	Issue 1 – (a) is a significant change. Gone from 1.25% to 0.25%. This will cause issues at our mine as CH4 periodically will go above 0.25% e.g. 0.5%. Some mines currently have exemptions to operate with 0.5% at start of (current) hazardous zone.	Leave as per existing legislation (1.25%)
	3	Definitions	Yes	The definition of intrinsically safe circuit includes " <i>and that has a valid certificate of conformity under clause 78</i> ", it is usually the case that individual parts of a circuit not the circuit have a certificate of conformity so this does not make sense.	This part of the definition should be deleted as the remainder of the definition is adequate.
	3	Definitions	Yes	In the definition of methane there are other substances listed that are scientifically recognised compounds that have different properties. Application of this definition means that a system to detect methane will mean a system to detect propane etc.	The definition of Methane should be deleted.
Part 2 - Managing Risks					
Division 1 - General requirements					

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
	16	Changes	Yes	Part(1)(a) Issue – giving notice to the regulator of every proposed change to the safety management system is overly onerous. As the SMS has been significantly increased by this legislation, giving notice " <i>before any change</i> " is unrealistic.	delete this clause. Regulator may request information as they require it.
Division 2 - Principal mining hazard management plans					
Division 3 - Other plans					
	26	Contractor H&S management plans	Yes	Clause 26 (5) (b) & (c) provision of written notice is an unnecessary administrative step that does not add value. It should be required that a "system" is in place for review and monitor.	Should be removed and replaced with a separate point - " <i>The mine operator must have a system for reviewing contractor health and safety management plans and monitoring compliance with those plans</i> "
	26	Contractor H&S management plans	Yes	Clause 26 should include a process that allows contractors to work directly under the mines SMS - particularly small businesses	Include an additional requirement that where the SMS of the operation includes activities conducted by the contractor, the contractor may work under the mines SMS.
Division 4 - Specific Control measures - All mines					
Subdivision 1 - Operational controls	29	Operation of belt conveyors	Yes	Clause 29 (d) inspection of 8 hours is too frequent and does not allow for an effective period to inspect a lengthy conveyor system underground.	This should be deleted and replaced with " <i>must ensure that there is a system for regularly inspecting belt conveyors by competent people, including but not limited to: (i) a schedule for conducting inspections that is relative to the risks associated with operating those belt conveyors. (ii) inspecting belts that have been shutdown due to the presence of any overheating, smouldering or other condition</i> "

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
					<i>likely to cause a fire (iii) in the case of underground mines, inspecting operating belts at least twice per day at an evenly spaced time interval"</i>
	30	Ground or strata failure	Yes	Clause 30(2) requires monitoring of all areas at or around the mine where controls are in place for the Principal Mining hazard of ground or strata failure, regardless of whether persons regularly work in those areas.	Clarification required: is an inspection a form of monitoring? Replace "all areas" with "frequently accessed areas".
	31	Seismic activity	Yes	Seismic activity is a risk in relation to strata and ground stability, it should be included in those processes.	Clause 31 should be removed from the body of the regulation and relocated to item (1) ground and strata instability of Schedule 1 Principal mining hazard management plans - additional matters to be considered
	33	Electrical Safety	Yes	Part (2)(b)(ii) Issue – processes to install, test/commission and then energise circuits can be safely completed without prior notification of EE or Operator. This is not practical in a 24/7 operation.	Remove (2)(b)(ii)
	33	Electrical safety	Yes	Clause 33 (2)(e)(iv) providing training to every person on every piece of electrical plant is not practicable.	The word " trained " should be replaced with " competent "
	33	Electrical safety	Yes	Clause 33 (2)(f)(vi) fixed communication device implies plant such as DACs, iMacs etc.	delete " fixed communication device at the mine " replace with " fixed communication devices associated with emergency management plans Cl 91(c) "
	33	Electrical safety	Yes	Clause 33 (2)(g) could be interpreted as requiring SIL rating (IEC61508) on	Delete " that suitable switchgear and protection devices (sufficiently reliable for the level of risk

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
				switchgear and protection devices. The majority of electrical switchgear and protection devices used in mines have not been assessed in accordance with IEC 61508, and would lead to mass non-compliance across the industry requiring mass exemptions.	<i>being controlled) are provided that automatically disconnect the power on the occurrence of any type of fault, at all points in the mine's electrical distribution system, and"</i> replace with <i>"that suitable switchgear and protection devices are provided that automatically disconnect the power on the occurrence of a fault the device was designed to detect, at all points in the mine's electrical distribution system, and"</i>
	33	Electrical safety	Yes	Clause 33 (2)(i) Mines use mains power portable electrical equipment that operate above 250V e.g. welders, belt splicers. "	<i>250 volts"</i> should be changed to <i>"450 volts"</i>
	33	Electrical safety	Yes	Clause 33 (2)(m) Electrical switchgear and protection devices used in mines have not been assessed in accordance with IEC 61508, and would lead to mass non-compliance across the industry requiring mass exemptions. There are other mechanisms available to determine that a control is sufficient e.g. compliance to Australian Standards, MDGs etc.	Delete <i>"that any electrical safeguards provided to control the risk from both electrical and non-electrical hazards have a safety integrity sufficient for the level of risk being controlled, and"</i> replace with <i>"that any electrical safeguards provided to control the risk from both electrical and non-electrical hazards are sufficient for the level of risk being controlled, and"</i> .
	33	Electrical safety	Yes	Clause 33 (2)(o) It is not practical to have earth leakage on ALL circuits. There is also guidance on this in 4871 and 2081 and this topic should be left in these standards. This clause is too prescriptive and will lead to mass non-compliance in the industry.	This clause should be replaced with <i>"that any electrical safeguards provided to control the risk from both electrical and non-electrical hazards are sufficient for the level of risk being controlled, and"</i>
	37	Minimum age to work in mine	Yes	Clause 37 (1) (b) does not account for trainee miners that may be required to operate mobile equipment or	Delete Clause 37 (1) (b) and Clause 37 (2)

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
				trainees/apprentices as part of a task retrieving materials or tools from a location other than the immediate work area. This also assumes that competency is age related which it is not, any provisions should include a process that acknowledges competency.	
Division 5 - Specific control measures - underground mines					
Subdivision 1 - all underground mines - operational controls	48	Winding systems	Yes	as it is a duplication of the registration process. The detail in this clause should be included in the registration requirements for winding systems	Clause 48 should be deleted
	48	Winding systems	Yes	Clause 48 to 50 these clauses seems to have taken parts of various other documents .e.g MDG2005, MDG33, EES008 . Some key parts of these reference documents are not in the regulations e.g. Primary Safety Circuit is not mentioned in full. The design registration process includes the requirement to comply with the relevant standards, guidelines etc. (This approach covers the specific engineering requirements in more detail than could be included in legislation.)	These clauses should be deleted and replaced with " <i>Winding systems must comply with requirement of design registration and item registration</i> ".
	54	Exhaust emissions and fuel standards	Yes	Clause 54 (1) written as an absolute that would not allow for a machine found out of compliance to be driven from the mine	delete " <i>raw exhaust emissions from diesel engines located underground do not contain any of the following contaminants in</i> " replace with " <i>a system is in place to monitor exhaust emissions from diesel engines located underground and maintain the following</i>

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
					<i>contaminants in concentrations that are no"</i>
	54	Exhaust emissions and fuel standards	Yes	Clause 54 (3) (a) see explanation in Clause 54 (3) (b) below	replace the " <i>and</i> " at the end of this point with " <i>or</i> "
	54	Exhaust emissions and fuel standards	Yes	Clause 54 (3) (b) Eromanga Underground Mine Fuel is used by the majority of NSW GCA UG mines including WWC under a variation to the Fuel Standards Act - the product does not meet density and sulphur content requirements under the Act. The product has quantified emissions benefits in the underground environment and the sites wish to continue its use. The legislation should enable this provided suitable evidence is available regarding their being no impact to the health and safety risks to workers at the mine.	add at the end of this point " <i>in relation to the standards set by this act</i> "
Subdivision 2 - All underground mines - air quality and ventilation	60	Ventilation system - further requirements	Yes	Clause 60 (2)(e) It is not possible to ensure that the main ventilation fan will not be damaged during an explosion as the range of scenarios is very large.	Delete " <i>as to ensure that it will not be damaged by an explosion at the underground mine</i> " replace with " <i>to minimise the likelihood that it will be damaged by an explosion at the underground mine,</i> "
	60	Ventilation system - further requirements	Yes	Clause 60 (2)(f) the reference to "fan" needs to be more specific	This clause should be " <i>there is a procedure in place for starting each type of fan (including the main fan) used to ventilate parts of the mine</i> "
	60	Ventilation system - further requirements	Yes	Clause 60 (3) 0.3 m/s in a standard road way equates to 5 cubic m/s, this is greater than the requirement for an area with diesel engines.	Delete " <i>0.3 m/s</i> " replace with " <i>1m³/s</i> "

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
Subdivision 3 - Underground coal mines	66	Coal dust explosion	Yes	Clause 66 (1)(h)(ii) does not account for mines that do not have a high content of methane in the seam they are extracting	should have " <i>or in the case of a mine that is generally free of methane, within 24 hours of the last application of stone dust</i> " added
	66	Coal dust explosion	Yes	Clause 66 (3) & (4) this detail was previously in a guideline	could be removed and including in a code of practice – If not removed change: 4(c)(1) " <i>week in the case of a face return</i> " to " <i>month in the case of a face return</i> ".
	66	Coal dust explosion	Yes	Clause 66(5)(a) 12 hours is not considered practicable.	Change " <i>12 hours</i> " to " <i>24 hours</i> ".
	68	Subsidence	Yes	Clause 68 (1) and (2) covered through the Environmental Act and Subsidence Management Plan process currently.	Suggest that being a new addition to the WHS a 'code of practice' would be useful guidance.
	69	Sealing	Yes	Clause 69(2)(c) No mines currently have this ability, it will be expensive to implement.	Refer transitional arrangements. This is not reasonably practicable at WWC
	69	Sealing	Yes	Clause 69(2)(d) No NSW mines currently have this ability, it will be expensive to implement and airlocks can be built after sealing	Should be deleted This is not reasonably practicable at WWC
	69	Sealing	Yes	Clause 69 (2)(e)(i) is not required in all mines	Should have added to it " <i>where this control has been identified to manage risks to health and safety</i> "
	69	Sealing	Yes	Clause 69 (2)(e)(iii) Mines that don't drive machines from surface to UG (e.g. West Wallsend, Tahmoor) cannot comply with this requirement.	Delete " <i>(iii) persons and large mobile plant to enter and exit the mine through an air lock</i> " This is not reasonably practicable at WWC

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
	69	Sealing	Yes	Clause 69(2)(h) the location of the potential event will determine where inertisation needs to occur, in the Blakefield South fire special seals and inertisation points were installed from the surface - these location could not have been determined prior to the incident.	Delete this clause
	72	Ventilation	Yes	Clause 72 (2)(d)(ii) currently not in place and systems not available to achieve this	delete " <i>will be incapable of being restored</i> " and replace with " <i>will not be restored</i> "
	72	Ventilation	Yes	Clause 72 (2)(d)(ii)cutting power by the quickest means available does not allow an assessment to be completed to determine what an appropriate tripping time should be. Tripping power instantly can adversely affect other systems e.g. emergency response procedures, PED, winders etc. Tripping time should be risk based.	Delete " <i>is cut off by the quickest means available</i> " replace with " <i>is cut off within the time determined in consultation with the Ventilation Officer, Manager of Mining Engineering, Manager of Electrical Engineering</i> ".
	72	Ventilation	Yes	Clause 72 (2)(e) 30% may not be adequate in some circumstances	"30%" should be replaced with " <i>prevent recirculation</i> "
	72	Ventilation	Yes	Clause 72 (2)(f) this is covered by cutting off the power	should be " <i>non-electrical auxiliary fan</i> " or remove this clause
	73	Control and monitoring of methane levels	Yes	Clause 73 (4) this in effect will require all man transporting vehicles to be fitted with methane detectors. There are lots of vehicles in service that don't have this. There is very low probability that an explosive mix of gases would be present on the intake side of a longwall or development panel (other controls exist to prevent this).	Delete " <i>that operates in a hazardous zone</i> " replace with " <i>that operates in a return airway</i> "

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
	73	Control and monitoring of methane levels	Yes	Clause 73 (5) as in Clause 73 (4)	Delete <i>"that operates in a hazardous zone"</i> replace with <i>"that operates in a return airway"</i>
	73	Control and monitoring of methane levels	Yes	Clause 73(5)	Change <i>"must ensure"</i> to <i>"make arrangements so that"</i>
	73	Control and monitoring of methane levels	Yes	Clause 73 (8) not all monitor faults are self revealing so this clause can not be complied with. This should be a duty for manufacturers and suppliers not mine operators.	Delete this clause or allocate the accountability to manufacturers and suppliers and add <i>"so far as is reasonably practicable"</i>
	74	Gas monitoring	Yes	Clause 74 (1)(b)(viii) This clause implies that the entire gas monitoring system, which has many component parts e.g. fixed online monitors, tube bundle etc, needs to have an alternate power supply. It is not practicable that the entire system has an alternative power supply. Only functions, determined by risk assessment, that require a backup supply should have one.	Delete <i>"requires an alternative power supply to ensure, so far as is reasonably practicable, that the gas content monitoring system continues to function if the normal power supply fails, and"</i> replace with <i>"where determined by risk assessment as being required, gas monitoring systems will have an alternate power supply so far as reasonable practicable, and"</i>
	74	Gas monitoring	Yes	Clause 74 (1)(b)(ix) assumes all gas monitoring systems remain online when mains power is removed (refer above). Not all gas monitoring systems remain active when underground power trips e.g. conveyor CO monitoring, PLC-based methane monitors. Clause 78 defines use of plant in hazardous zone. This includes gas monitoring systems and doesn't need to be repeated here.	Delete this clause.

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
	74	Gas monitoring	Yes	Clause 74(1)(d) refers to air monitoring system.	Modify to read " <i>that an accurate plan of the gas monitoring system for the mine is maintained that specifies the locations at which gas is monitored, and</i> "
	76	Requirements if quality or safety standard not met	Yes	Clause 76 is a duplication of Clause 58.	Should be deleted
	78	Use of plant in hazardous zone	Yes	Clauses 78 (3), (4) and (5) could be interpreted that the certificate of conformity must specify Australian standards. For many years the NSW has been using IEC standards and the IECex certification program, to revert to Australian only certificates would cause major problems in NSW UG mines.	These clauses should acknowledge conformity with or certification to the equivalent IEC standards ex ib is missing from this list. Ex ib systems are currently in use. ex d is missing from this list. Ex d is everywhere underground.
	78	Use of plant in hazardous zone	Yes	General Issue with Clause 78 – this clause seems to run in parallel with gazette notice system.	The legislation should go with one system or the other i.e. bring it all into this regulation, or leave all in the gazette.
	78	Use of plant in hazardous zone	Yes	Clause 78 (6) Onus is on the purchaser with regards to obtaining information in relation to explosion protected equipment. This onus should be with the supplier to provide the relevant documents, and for the purchaser to verify the equipment supplied complies with legislation prior to use in hazardous zone. The proposed clause creates no incentive or duty for the supplier to provide this information.	Delete " <i>A person (the purchaser) who conducts a business or undertaking at an underground coal mine must not purchase explosion-protected plant from another person (the supplier) unless the supplier provides</i> " replace with " <i>The supplier of explosion-protected plant must provide</i> "
	80	Use of cables in hazardous zone	Yes	Clause 80 is too prescriptive and will create compliance issues for many operations.	Clause 80 (3)(d) should be deleted and replaced with " <i>is a cable that is determined as fit for use by the mine operator, in consultation</i> "

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
					<i>with the individual holding the statutory position of electrical engineering manager at the mine."</i>
	82	Electrical safety - testing circuits in hazardous zone	Yes	Clause 82 (4) there are circuits that are not intrinsically safe that are tested in the hazardous zone e.g. insulation test - cable, continuity test - cable.	Delete this clause.
Subdivision 4 - all coal mines	85	Inspection program	Yes	Subdivision 4 All coal mines is under Division 5 Specific control measures - underground mines	<i>this should be a new division not a subdivision</i>
	85	Inspection program	Yes	Clause 85 (2)(b)(ii) this may not be practical in some places	delete " <i>any part of the mine</i> " replace with " <i>any accessible part of the mine</i> "
	85	Inspection program	Yes	Clause 85 (2)(b)(iii) should be an underground coal mine requirement only	add at the beginning of the point " <i>in the case of an underground coal mine</i> "
	85	Inspection program	Yes	Clause 85 (4) does not account for operations that have 12 hour shifts	delete " <i>at least once every 8 hours</i> " and replace with " <i>at least once every shift</i> "
	85	Inspection program	Yes	Clause 85 (5)(a)(iv) does not account for operations that have 12 hour shifts	delete " <i>at least once every 8 hours</i> " and replace with " <i>at least once every shift</i> "
	85	Inspection program	Yes	Clause 85 (5)(b)(i) does not account for operations that have 12 hour shifts	delete " <i>at least once every 8 hours</i> " and replace with " <i>at least once every shift</i> "
	85	Inspection program	Yes	Clause 85 (5)(c)if ventilation has been maintained, there should be no requirement to reinspect outside of the inspection scheme.	Delete and replace with " <i>When ventilation has not been maintained to underground parts of the mine, an inspection for the presence of flammable gas prior to the supply of electric power to those underground parts of the mine</i> "
	85	Inspection program	Yes	Clause 85 (5) (k) and (l) these inspections are outside of the scope of mining inspections. These types of inspections are	Delete from this part of the regulation

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
				required by the engineering management plans.	
	85	Inspection program	Yes	Clause 85 (11) place of work could be interpreted as the entire mine site	delete " <i>place of work</i> " replace with " <i>immediate work area</i> "
Division 6 - Emergency Management					
Subdivision1 - Emergency plans for all mines	87	Duty to prepare emergency plan	Yes	Clause 87 (2)(a)(vi) transport may not be available in all areas, and in some cases, the quickest and safest way to access a place of safety is to walk.	following the word evacuation add " <i>so far as is reasonably practicable</i> "
	88	Consultation in preparation	Yes	Clause 88(2) as emergency service organisations are not necessarily familiar with mining specific issues, their recommendations may not always be practicable	Delete " <i>addresses</i> " and replace with " <i>considers</i> "
	93	Review	Yes	Clause 93(1)(a) requires that the plan is reviewed at least once per year. This places a arbitrary timeframe on the review of a process without an appropriate trigger. The face that the plan is tested annually, and the plan is to be reviewed after this test will serve the purpose, at an appropriate trigger, for review.	Delete this clause.
	94	Training of workers	Yes	Clause 94 (b) workers may not need to know all of the detail in the plan, this could in fact reduce the retention of what is important	Add at the beginning of this point " <i>receive relevant training or information</i> "
Subdivision 2 - Underground mines	96	Safe escape and refuge	Yes	Considerable amount of detail within this section that should be contained within a Code of Practice.	Modify this section to require a system to be developed, with the majority of detail extracted to a Code of Practice.

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
	96	Safe escape and refuge	Yes	Clause 96 (2)(c) communications to mobile plant in an underground coal mine is not achievable.	delete " <i>mobile plant</i> " from this clause
	96	Safe escape and refuge	Yes	Clause 96 (3) Not all parts of the communication needs a backup power supply.	Delete " <i>as part of a communication system for the mine</i> " replace with " <i>as critical parts of the communication system for the mine</i> "
	96	Safe escape and refuge	Yes	Clause 96 (4) this clause is not needed. It is covered by Clause 78.	Delete this clause
	96	Safe escape and refuge	Yes	Clause 96(6)(d)&(e) requires provision of water at refill and changeover stations, along with procedures for rehydration in an irrespirable atmosphere. The reference to rehydration and provision of water suggests that a fresh air changeover station is required. This will significantly delay self escape efforts and potentially encourage people to remain in fresh air. We should be actively encouraging people to self escape without delay.	References to provision of water at refill stations and change-over stations, and rehydration in irrespirable atmospheres should be deleted. These two clauses can be combined into 1 and should read as follows " <i>the provision of communications at refill stations and procedures for communicating in an irrespirable atmosphere</i> "
	96	Safe escape and refuge	Yes	Clause 96 (6)(f) due to mobile nature of change-over stations, maintaining monitoring systems will be hard to achieve. Currently personnel are trained to complete the change-over to CABA assuming an irrespirable atmosphere.	Delete this clause.
	96	Safe escape and refuge	Yes	Clause 96 (6)(g) There are periods in which this clause may not be required.	Delete " <i>limiting the number of workers in an area to the cache or refill station capacity for the area</i> " replace with " <i>manage the number of workers in an area using a risk-based approach and with reference to the cache or refill station capacity in that area</i> ".

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
	96	Safe escape and refuge	Yes	Clause 96(7)(d) as in clause 96 (6)(f) due to mobile nature of change-over stations, maintaining monitoring systems will be very hard to achieve. Currently personnel are trained to complete the change-over to CABA assuming a irrespirable atmosphere.	Delete this clause
	96	Safe escape and refuge	Yes	Clause 96(7)(f) as in clause 96 (6)(g) There are periods in which this clause may not be required e.g. shift changeover. These periods can be managed using risk-based methods.	Delete " <i>limiting the number of workers in an area to the refuge chamber capacity</i> " replace with " <i>manage the number of workers in an area using a risk-based approach and with reference to the refuge chamber capacity in that area</i> ".
	99	Self rescuers	Yes	Clause 99 (3)(a) - 3 monthly is not sustainable	delete " <i>every 3 months</i> " replace with " <i>every 6 months</i> "
	101	Competent person at surface	Yes	Clause 101 (b) the restoration of power underground is a process which is managed by the restoration of power plan.	Delete " <i>and restore</i> " from this clause
Division 7 - Information, training and instruction					
	104	Duty to provide induction for workers	Yes	Clause 104 is too broad and not consistent with 102.	Add " <i>relevant to their work</i> "
Part 3 - Health Monitoring					
	108	Health monitoring of worker	Yes	Order 41 needs to be revoked as it is a duplicated requirement for coal mines.	
	111	Duty to pay costs	Yes	Clause 111(2) as contractors work for many mines and may work only occasional at a mine, it is not reasonable to assign this duty to the operator.	Delete and replace with " <i>if the mine operator has not engaged a worker at the mine, the PCBU that engaged that worker must pay expenses relating to health monitoring</i> "
	117	Duty to give health monitoring report to regulator	Yes	Clause 117 (a) – Only significant adverse health effects should be reportable and whether it is significant or not should be determined by the medical practitioner.	Change " <i>any adverse health effect</i> " to " <i>any significant adverse health effect</i> " and replace " <i>from exposure to a risk associated</i>

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
					<i>with mining operations" to "from an exposure associated with mining operations"</i>
	117	Duty to give health monitoring report to regulator	Yes	Clause 117 PCBUs can work a multiple mines and should be responsible for they own health monitoring records.	Reword to <i>"The mine operator of a mine or a PCBU must"</i>
	118	Reports kept as records	Yes	Clause 117 (b) should only be in relation health effects from work exposures.	Add to the end of this point <i>"as a result of a health effect from an exposure associated with mining operations"</i>
Part 6 - Provision of information to regulator					
	127	Duty to notify regulator of certain incidents	Yes	Current practice allows verbal notification within 24 hrs and written notification within 7 days.	Clause 127 (2) add to the end of this point <i>", unless verbal notification is made within 24hrs then the notification set out in (3) below must be made within 7 days"</i>
	127	Duty to notify regulator of certain incidents	Yes	Clause 127 (4) (a) linking this part of regulation to clause 177(a) has some unpractical outcomes e.g. the incidents listed in 177(a)(xiii) – would require us to report every collision between anything that occurs onsite, and 177(a)(xv) – would require us to report every single plant or structure damage. The definition of a dangerous incident is sufficient to cover high potential incident as it includes "serious risk to a person's health and safety	Delete this point and replace with <i>"a dangerous incident that did not result in an injury or an illness" -</i>

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
	127	Duty to notify regulator of certain incidents	Yes	Clause 127 (4) (k) this clause will catch events that should not require notification e.g. if the phone system malfunctions, and you withdraw from a section in the mine (which is a control to prevent another risk from occurring), this should not need to be reported. All items that create an imminent risk to health and safety already need to be notified.	Delete this clause.
	127	Duty to notify regulator of certain incidents	Yes	Clause 127 (4) (m) and (n) not these subsidence reporting requirements are sustainable.	Clause 127 (4) (m) and (n) (i) add to this point " <i>unplanned</i> " (ii) Rock falls, instability of cliffs, steep slopes or natural dams (<i>fine but more detail required on rock falls, also difficult to tell what is subsidence and what is natural</i>) (iii) Sinkholes (<i>fine but needs a definition of size that triggers reporting</i>) (iv) Surface cracking or deformations (this is unreasonable, we would have literally hundreds of occurrences each year. <i>Needs definition of size if to remain in legislation</i>) (v) Release of gas at the surface (this will also be onerous because there could be dozens of cases each year and it is impossible to monitor). <i>delete this point.</i>

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
	128	Duty to notify regulator of other matters	Yes	Clause 128 (1)(b) this notification is too broad Clause 128 (6) the detail in (6) should not be required to be provided to the industry safety and health representative.	Clause 128 (1)(b) requires some clarification on interruptions Clause 128 (6) delete " <i>A notice given under this clause</i> " replace with " <i>A notice given under this clause to the regulator</i> "
	130	Duty to notify operator of notifiable incident	Yes	Incident notifications for incidents at a mine should be the responsibility of the mine operator.	Reword: " <i>A person who conducts a business or undertaking at a mine must ensure that the mine operator is notified as soon as is reasonably practicable of any notifiable incident that is required to be notified to the regulator under section 15 (2) of the WHS (Mines) Act. It is the responsibility of the mine operator to notify the regulator and the industry health and safety representative.</i> "
Part 8 - Statutory functions					
Division 2 - Appointment to statutory positions					
	134	Statutory positions and functions	Yes	Electrical and Mechanical Tradesmen should be deleted from the list of statutory positions as mines currently have appointment systems with greater detail than just a broad appointment to perform/supervisor electrical or mechanical work. Tradesmen currently receive appointments for each type of work that they are approved to perform e.g. high voltage switching or high pressure hydraulics. This is consistent with Schedule 2 – Part 3 – Clause (1) – electrical	Minimum competency requirements could be detailed in Part 2 Division 7 information, training and instruction

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
				engineering control plan (d) the competency by workers to safely work on electrical plant or electrical installations at the mine. Competency of tradesmen also currently covered by Order 34	
	134	Statutory positions and functions	Yes	The statutory functions of Mining, Electrical and Mechanical engineering manager dictates a mines management structure taking away the flexibility created by Part 2 Division 1 Subdivision 3 Clause 14	Should be " <i>to establish and monitor the mining/electrical/mechanical engineering systems and standards for operations at the mine</i> "
Part 9 - Licenced activities					
	150	Activities to which part applies	Yes	Clause 150 (c)(i) tradesmen can currently replace components	Following the word repairing add " <i>(repairing does not include the replacement of components)</i> "
Part 13 - Miscellaneous					
	175	Registration of plant designs and items of plant	Yes	Clause 175 (1)(e) this clause is vague in relation to the types of plants/items the detect gases. Is Tube Bundle included? If so, there is no available products that comply with this.	Delete " <i>plant or items used to determine or monitor the presence of gases,</i> " replace with " <i>plant or items used to determine or monitor the presence of gases in real-time</i> " (real time does not include Tube Bundle?)
	177	Dangerous incidents	Yes	Clause 177 (f) We deliberately overturn plant weighing over 100kg as part of normal operations and maintenance.	Delete the clause and move into Clause 177 (a)
	177	Dangerous incidents	Yes	Clause 177 (f) "the overturning of vehicle or plant weighing more than 100 kilograms" - 100kg nominated is too low and will encompass some activities which are normal operations at the mine - suggest	The mass should be 1000kg

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
				this may be a typo.	
	177	Dangerous incidents	Yes	Clause 177 (a)(x) covers every main or aux fans trip which is not practical.	Add to this point " <i>that results in a withdrawal of personnel from the mine</i> "
	177	Dangerous incidents	Yes	Clause 177 (a)(xvii) see comments for Clause 127 (4) (m) and (n) above.	
Schedule 1 - Principal mining hazard management plans - additional matters to be considered					
		Gas outburst	Yes	Schedule 1 - 7 (b) this does not belong in outburst.	<i>"the potential for accumulation of gases in working areas and abandoned areas of the mine"</i> should be moved to ' <i>inrush</i> '.
Schedule 3 - High risk activities					
Part 1 - All mines		Electrical work on energised electrical equipment	Yes	Schedule 3 Part 1 Clause 3 Electrical Work on Energised Electrical Equipment is very broad by definition in the WHS regulations e.g. this includes testing. It is not practicable to wait 7 days to perform electrical testing.	Add " <i>(4) For the purposes of this clause electrical testing is not considered electrical work</i> ".
Part 2 - Underground mines		Connected voltage becoming greater than 12,000 volts	Yes	Schedule 3 Part 2 Clause 7 if equipment is rated for this voltage and the provisions of this regulation are applied it is not a high risk activity.	Delete this clause.
Part 3 - Underground coal mines		Use of high voltage plant and cables in hazardous zone	Yes	Schedule 3 Part 3 Clause 16 11kV equipment has been in use on longwall faces since 2010 with no incident reports that support the claim this is a high risk activity.	16 (1)(a) Delete " <i>4000</i> " and replace with " <i>11,000</i> "
		First use of a diesel engine that is not flameproof	Yes	Schedule 3 Part 3 Clause 24 this is not a high risk activity, and is covered by clause 81.	Delete this clause
Schedule 4 - Prohibited uses in mines					

Subdivision	Clause	Description	Oppose Yes/No	Comments / Issues	Recommendations
		Item and prohibited use	Yes	Schedule 4 Item 7 – if light metal alloys are managed as required in Clause 70 (page 66) this allows their safe use (with appropriate management plan and associated controls in place) in the hazardous zones of the mine.	Delete item 7 from table
Schedule 7 - Matters to be included in emergency plan for a mine					
		Resources and equipment	Yes	Schedule 7 - 4 (4) it is generally not possible to provide communication to areas in which you have no electrical connection or electrical infrastructure.	Delete this clause – this is already covered in emergency management plan requirements.
Schedule 10 - Statutory functions					
Part 2 - Coal mines other than underground mines		List of other coal mine stat positions	Yes	Schedule 10 - Part 2 - If a mine is not conducting extraction work at the mine - mining activities (construction work) there should not be a requirement to have a statutory position of a Mining Surveyor. It should be a Registered Surveyor.	Reword: " <i>Mining Surveyor (only required if extraction occurs at the mine)</i> "