



**Submission of the Construction, Forestry, Mining and Energy Union (Mining and Energy Division) on the *Work Health and Safety (Mines) Regulations 2014* (NSW)**

July 2014

## **INTRODUCTION**

1. The Construction, Forestry, Mining and Energy Union (Mining & Energy Division) (“CFMEU”) welcome the opportunity to provide this submission on the *Work Health and Safety (Mines) Regulations 2014* NSW (“the Regulation”).
2. We acknowledge the ongoing commitment of the New South Wales Government to the tripartite development of the Work Health and Safety (“WHS”) regulatory framework for mining. The view of the CFMEU, a view supported by the weight of expert evidence, is that international best practice WHS regulation for mining will only ever be achieved and maintained through a genuine commitment to tripartism.
3. Our submission in respect of the Regulation is divided into two parts. After a brief introduction to our union, we make technical submissions about the Regulation. In respect of our technical submissions, these reflect our commitment to worker participation in WHS regulation and the maximisation of the participation of Mining Safety and Health Representatives and Industry Safety and Health Representatives (commonly and collectively known as “Check Inspectors”) in monitoring and enforcing the WHS regulatory framework.

## **THE CFMEU**

4. A national union for Australia’s coalminers was first federally registered in 1915 as the Australasian Coal & Shale Employees Federation (although it was most commonly referred to as the “Miners’ Federation” or, simply, “the Federation”). However, coalminers’ unions had existed in Queensland, New South Wales and in several other states of Australia prior to this. In 1990, an amalgamation process led to the formation of the United Mineworkers Federation of Australia (“UMFA”). In 1992, UMFA along with several other unions including the Building Workers’ Industrial Union, the Federated Engine Drivers’ and Firemen’s Association and the Australian Timber and Allied Industries Union embarked upon a further amalgamation process which ultimately led to the formation of the CFMEU.
5. The CFMEU is a registered union at both federal and state level in Australia and has over 120,000 members organised into three divisions: the Construction and General Division, the Forestry and Forest Products Division and the Mining and Energy Division.

6. The CFMEU, through its Mining and Energy Division, is the principal union in the black coal mining industry in Australia and represents the work health and safety (“WHS”) interests of approximately 22,000 workers in that industry. The CFMEU also represents mine workers in the brown coalmines of Victoria’s La Trobe Valley, power workers in Victoria, New South Wales and Queensland, stevedores in export coal ports on Australia’s eastern seaboard and mine workers, subject to coverage limitations, in the metaliferrous mining industry.
7. The CFMEU has since the 1930s continuously employed fulltime District Check Inspectors who exercise statutory functions and powers under State-based coal mining specific WHS legislation in New South Wales (and Queensland). In addition, the CFMEU has a number of current full-time elected officials with significant industry, WHS and technical expertise, including experience in numerous mining warden and coronial inquiries into coal mining fatalities and disasters in Australia.
8. The CFMEU is the legitimate collective voice for coalmine workers on WHS matters in New South Wales.

### **Technical Submissions**

<b>CLAUSE</b>	<b>PAGE</b>	<b>COMMENTS</b>
9	19	<p>Amend clause 9(2) to ensure the person conducting the business or undertaking is required to invite, and subsequently allow, the Mine Safety and Health Representative (“MSHR”) to be involved in a risk assessment;</p> <p>Amend clause 9(2) to ensure the person conducting the business or undertaking is required to invite, and subsequently allow, at least one member of the work group affected by a risk assessment to be involved in the risk assessment. <i>Cf</i> s10 of the <i>Coal Mining Safety and Health Regulation 2001</i> (Qld)</p> <p>Amend clause 9(5)(a) so that a risk assessment identifies all participants involved in the risk assessment.</p> <p><u>Rationale</u>: the risk assessment process is an integral part of the regulatory regime, it must involve representative(s) of workforce affected by the risk assessment and the MSHR and be properly documented.</p>

16	26	<p>Amend clause 16(1)(a) to include the MSHR;</p> <p>Amend clause 16(1)(b) to include Industry Safety and Health Representative (“ISHR”)</p> <p><u>Rationale:</u> the MSHR and, more broadly, the ISHRs have responsibility for representing workers at the mine and requires up to date knowledge and information in order to do so.</p>
26	32	<p>Amend clause 26(5)(a) so as to also require a contractor to provide a contractor health and safety management plan to MSHR</p> <p><u>Rationale:</u> the MSHR has responsibility for representing employees of contractors as members of a mine’s work group and requires up to date knowledge and information in order to do so.</p>
29	34	<p>Amend clause 29(d)(ii) to require two hourly inspections.</p> <p><u>Rationale:</u> the risk (and consequences) of fire in shut down belt conveyor situation requires a mandatory inspection regime.</p>
31	35	<p>Amend clause 31(c) by substituting ‘hazard’ for ‘damage’.</p> <p><u>Rationale:</u> the use of the word ‘damage’ is misplaced here, as it is consequential. The provision needs to require that the design of the mine deals with the <i>hazard</i> of a sudden release of energy from the build-up of mining induced stresses.</p>
34	39	<p>Amend clause 34(1)(a) to include ISHR and MSHR</p> <p><u>Rationale:</u> the MSHR and, more broadly, the ISHRs have responsibility for representing workers at the mine and require up to date knowledge and information in order to do so.</p> <p>Amend clause 34(3) to include MSHR.</p> <p><u>Rationale:</u> the MSHR has responsibility for representing workers at the mine and requires up to date knowledge and information in order to do so.</p>
40	43	<p>Amend clause 40 by adding a new clause 40(1) (c) for “respirable crystalline silica – 0.1 mg per cubic metre of air”.</p> <p><u>Rationale:</u> inclusion respirable crystalline silica ensures all standards for dust relevant to coalmines are located in the same regulation.</p>
41	43	<p>An amendment to clause 40 in the manner suggested above will require a corresponding amendment to clause 41 to include a reference to the new clause 40(1)(c).</p>

52	50	Amend clause 52 to require effective ‘two way’ communication  <u>Rationale:</u> due to the singular importance of communication during an emergency, it is critical that any device deployed permits both transmission and reception of communications.
54	50	We query the use of percentages rather than parts per million in this clause.
56	53	Amend clause 56(1)(c) to include a level for diesel particulate matter.  <u>Rationale:</u> we do not believe that it is international best practice to adopt a ‘ALARP’ (as low as reasonably practicable) approach when there are already established controls for a known carcinogen.
58	53	Amend clause 58 to include a new clause 58(b)(v) for diesel particulate  <u>Rationale:</u> we believe this amendment is necessary to ensure certainty and completeness.
60	55	Amend s60(2)(b) by adding ‘appropriate construction’  <u>Rationale:</u> not only must plant and structures be in good working order they must also be appropriate to the circumstances of the particular mine or part of the mine. We also believe that guidance material could assist in respect of the regulatory requirements for ventilation.
69	65	Amend clause 69(2)(f) by adding a requirement that the test be ‘documented’  <u>Rationale:</u> The requirement to document is good practice, evidence that the test has been undertaken and evidence as to when the next test needs to be undertaken.
77	75	Amend clause 77(2)(c) to require an alternative monitoring system in the event of failure by the primary monitoring system.  <u>Rationale:</u> Information about a mine’s atmosphere post an explosion or fire is critical to emergency response. It is unacceptable and far from best practice not to have an alternative means of monitoring a mine’s atmosphere in the event the primary monitoring system fails.
85	84	Clause (7)(a) contains a typographic error.
88	86	Amend clause 88(1)(b) by deleting ‘New South Wales Mines Rescue Brigade’ and replacing it with ‘Mines Rescue Pty Limited (New South Wales)’  <u>Rationale:</u> this change reflects the proper name and legal status of the entity to which is refers.

91	88	<p>Amend clause 91 to include a new clause 91(d) requiring the mine operator of a coal mine to provide a list of equipment and resources available at the mine to mines rescue.</p> <p><u>Rationale:</u> We believe this amendment represents best practice, would assist on preventing confusion as to what was available at the coal mine and would assist mines rescue in determining what equipment to take to the coal mine.</p>
93	88	<p>Amend clause 93 but adding clause 93(1)(d) requiring the mine operator to test to an emergency plan after an incident;</p> <p><u>Rationale:</u> We also believe a copy of a reviewed emergency plan should be provided by the mine operator to mines rescue and emergency services.</p>
94	89	<p>Amend clause 94 by adding a new clause 94(c) requiring ongoing training and refresher courses for mine workers.</p> <p><u>Rationale:</u> One-off training is not sufficient; training must be regular and ongoing.</p>
95	90	<p>Amend clause 95(6)(b) so as to specify the type of fire fighting equipment available.</p> <p><u>Rationale:</u> In our view it is critical to prescribe the type and standard of fire fighting equipment.</p> <p>Amend clause 95(6)(c) to ensure mine workers are familiarised with the means of escape when they are first employed at the coal mine and at least once every 6 months after that:</p> <p><u>Rationale:</u> this proposed amendment is consistent with the current regulatory requirements: clause 132 CMHSR 2006; clause 47 CMHSR 2006.</p> <p>Amend clause 95(6)(d) delete ‘as far as is reasonably practicable’.</p> <p><u>Rationale:</u> this must be a mandatory requirement placed upon the mine operator of a coal mine.</p>
96	90	<p>Delete ‘as far as is reasonably practicable’ from clause 96(2).</p> <p><u>Rationale:</u> this must be a mandatory requirement placed upon the mine operator of a coal mine.</p>
101	95	<p>Amend clause 101(b) by deleting “restore” and replace with “switch on”.</p> <p><u>Rationale:</u> To ‘restore’ power to a coal mine has a different meaning than to ‘switch on’ power at a coal mine. Restoration of power would require, at least, the involvement of an electrician and a risk assessment.</p>

103	96	Amend clause 103 to add “MSHR”  <u>Rationale:</u> whilst the MSHR is a ‘worker’, we believe that is important to avoid doubt by including the MSHR as MSHR also have responsibility for representing workers at mines and require up to date knowledge and information in order to do so.
106	98	Amend clause 106 to add “MSHR”  <u>Rationale:</u> the MSHR have responsibility for representing workers at mines and require up to date knowledge and information in order to do so.
Part 3 - Health Monitoring	99-104	The provisions in Part 3 need to be drafted to ensure they do not override or replace Order 41. One way of achieving this is for the Regulation to call up Order 41. An alternative way of dealing with it would be to specify that nothing in Part 3 limits the operation of Order 41 and to the extent of any inconsistency between the clauses contained Part 3 and Order 41, Order 41 prevails.
120	105	Amend clauses 120 by inserting a new clause 120(g) requiring the mine operator to consult with the MSHR in respect of the matters specified in clause 120(a)-(f)  <u>Rationale:</u> the MSHR has responsibility for representing workers at the mine and requires up to date knowledge and information in order to do so.
121	107	Amend clause 121(6) by deleting ‘take all practical steps to’.  <u>Rationale:</u> this must be a mandatory requirement placed upon the mine surveyor. The accuracy of a mine survey plan is critical in our assessment.
126	110	Amend clause 126(1)(a) by adding ‘ISHR’ and Mines Rescue  <u>Rationale:</u> The provision of mine survey plans to ISHRs and Mines Rescue is important for both inspections and an accurate understanding of current and old mine workings.
127	112	Amend clause 127(4)(l) by deleting ‘mine’ and replacing it with ‘any working place at the mine’  <u>Rationale:</u> The purpose of the regulation is to ensure two means of egress is available to mine workers and therefore the requirement must relate to a working place in the mine and not just the mine itself.
128	114	Amend clause 129(5) by adding ‘in consultation with the ISHR’ after the words ‘on the application of a mine operator’.  <u>Rationale:</u> ISHRs have responsibility for representing workers at mines and requires up to date knowledge and information in order to do so

129	114	Amend clause 129(1) by adding 'ISHR'  <u>Rationale:</u> ISHRs have responsibility for representing workers at mines and requires up to date knowledge and information in order to do so.
130	115	Amend clause 130 by requiring the person who conducts a business or undertaking to also notify the 'MSHR' and 'ISHR'  <u>Rationale:</u> the MSHR and, more broadly, the ISHRs have responsibility for representing workers at the mine and requires up to date knowledge and information in order to do so.
132	117	Amend clause 131 by deleting clause 131(4).  <u>Rationale:</u> if the concern here is one of privacy, this is appropriately dealt with by clause 131(5).
134	118	Clause 134 needs to be amended to reflect the fact that statutory position holders must be employees of the mine operator:  <u>Rationale:</u> This is the current regulatory requirement see, clause 44 CMSHR 2006 (subject to exemptions). Contract statutory position holders are not WHS best practice. We do not accept as either sound or legitimate the policy and/or artificial technical legal arguments advanced in favour of contract statutory positions. Moreover, WHS outcomes must not be dictated to by distortions in the labour market; distortions largely created by the mine operators themselves.
135	120	Amend clause 135(5) by adding "ISHR"  <u>Rationale:</u> ISHRs have responsibility for representing workers at mines and require up to date knowledge and information in order to do so.
166	135	This clause should be deleted.  <u>Rationale:</u> We are not persuaded by the justification and reasoning for the inclusion of this provision. We are also concerned by the possible interpretation of "administration" and "clerical offices". We believe this clause may be open to misuse and abuse.
182	143	Amend clause 182(1) by adding 'ISHR' and 'MSHR'  <u>Rationale:</u> the MSHR and, more broadly, the ISHRs have responsibility for representing workers at mines and require up to date knowledge and information in order to do so.  Amend clause 182 to require that any exemptions granted by the regulator be gazetted.  <u>Rationale:</u> we believe this is best practice and will contribute to the orderly flow of information throughout the mining industry.

Schedule clause 9	3, 159	Amend clause 9 but adding a new clause 9(3)(d) ventilation arrangements  <u>Rationale:</u> information and documentation about ventilation arrangements are critical in these circumstances.
Schedule clause 10	3, 159	Amend clause 9 but adding a new clause 10(3)(c) ventilation arrangements  <u>Rationale:</u> information and documentation about ventilation arrangements are critical in these circumstances.
Schedule clause 3	8, 179	Amend clause 3 should to incorporate the following: <ul style="list-style-type: none"> <li>• What action was taken; and</li> <li>• What can be done to prevent recurrence.</li> </ul> <u>Rationale:</u> we believe that it represents best practice to document what action was taken and what controls were put in place to prevent recurrence. We also believe that the documenting of such matters will assist with auditing, inspection, compliance and, if necessary, enforcement.

## **Draft Work Health and Safety (Mines) Regulation 2014 - Discussion Document (May 2014)**

### *5.1 Election process for mine safety and health representatives*

We strongly support the incorporation of the existing process contained in Section 159 of the *Coal Mine Health and Safety Act 2002* (NSW) (“CMHS Act”) in the Regulation for the election of MSHRs. It is completely counterintuitive and unsatisfactory to be proposing a different election process by which mineworkers can elect one of their own to represent their WHS interests when the *Work Health and Safety Act 2011* (NSW) provides that the workers of the relevant workgroup may themselves determine how an election for health and safety representatives is conducted. The *Work Health and Safety Act 2011* (Cth) contains identical provisions.

We do not accept there is any basis for moving away from the election process contained in s159 of CMHS Act, which has served mineworkers in NSW so successfully. To the best of the CFMEU’s knowledge there has never been a complaint made, an inquiry carried out or an invalid ballot conducted in respect of the current process.

Indeed, the only stakeholders pushing for change to the election process are employers. We try not to judge their motivations. However, we note there is a significant push in Queensland to place control over the MSHR (SSHR in Queensland) election process in the hands of the SSE (and, thereby, effectively the mine operator). Not only is such an approach disrespectful to mine workers, it is also a denial of tripartism and contrary to the commitments made to us when the CFMEU agreed to participate in WHS mining regulation harmonisation. Furthermore, such an approach is also contrary to international best practice for worker participation in WHS.<sup>1</sup>

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<sup>1</sup>See, Walters, D and Nichols, T *Worker Representation and Workplace Health and Safety*, Palgrave Macmillan (2007)