

This submission is in response to the Discussion Paper for the consultation on the draft WHS (Mines) Regulation 2014

The submission is made on behalf of: Wambo Coal

Contact details:

Name: E. Jason Davis

Address: Jerry's Plains Road, Warkworth

Email: [edavis@peabodyenergy.com](mailto:edavis@peabodyenergy.com)

Organisation: Peabody Energy Australia, Wambo Coal

Position: General Manager

The Wambo Mine is a combined open-cut and underground mine located 30 kilometres west of Singleton that produces thermal coal and pulverized coal injection (PCI) coal for export and domestic markets.

At Peabody, safety is a way of life. Safety is central to Peabody Energy's mission.

Peabody conducts state-of-the-art training that exceeds federal and state mandates. We also cooperate with government agencies around the world to advance safety technologies and best practices toward our vision of zero incidents of any kind.

The submissions following are as listed:

- Wambo Coal additional Submission Points
- Peabody Energy Submission Points

## **Wambo Coal Additional Submission Points**

<b>Comments in relation to draft regulation</b>	
3.9.3	<p><b>Search powers for Underground Mines</b></p> <p>Issue:</p> <p>What are stakeholders' views on the inclusion of NCDIs 31.5 and 31.6 in the WHS (Mines) Regulation?</p> <p>Suggestion:</p> <p>Wambo Coal supports the inclusion of search powers for mine operators in the WHS (Mines) Regulation but search powers should be extended to include all parts of a mining lease including Open Cut, Coal Handling Plants and general surface areas</p>
3.4	<p><b>Health Monitoring</b></p> <p>Issue:</p> <p>What are stakeholders' views on the inclusion of NCDIs 26.20 to 26.22 in the draft WHS (Mines) Regulation?</p> <p>A drug testing regime must be capable of accurately detecting illicit drugs and must be supported by an accredited standard.</p> <p>Currently the Australian Standard does not meet accreditation requirements for oral testing and therefore can affect Health and Safety in the workplace.</p>

3.3	<p><b>Safety Management Systems</b></p> <p>Issue:</p> <p>What are stakeholders' views on the flexibility that the provisions provide with respect to specifying the detail required in the SMS?</p> <p>Suggestion:</p> <p>The title "Safety Management System" would be further advanced as "Health Safety Management System".</p>
65	<p><b>Ventilation Plan</b></p> <p>Issue:</p> <p>The proposed draft legislation does not state what points in the mine must be measured for the monthly ventilation plan. Neither does the Draft Ventilation of Underground Mines Code of Practice (from 2011) state what points in the mine must be measured.</p> <p>Why is this a problem:</p> <p>Measurement points are clearly defined in the current NSW CMHS Regulations and ensure that all mines meet a consistent minimum standard. This is considered a "core" issue applying to underground coal mines and needs to be documented in an industry standard. Removing this requirement from the legislation, without capturing it in a recognised standard such as a Code of Practice, removes current protections but does not leave any reference or guide to Operators on how to achieve ALARP.</p> <p>Suggestion:</p> <p>The current requirements of the legislation need to be included in the finalised Ventilation Code of Practice.</p>
72(2)D	<p><b>Minimum Air Quantity Not Supplied to Part of Mine Electrical Power to be Tripped and Incapable of Being Restored</b></p> <p>The intent of this clause needs to be further clarified. Is it referring to simply tripping power if a fan (i.e. main fan, booster fan or panel aux fans) stops as per the current NSW CMHS Reg 19(1)(k)(ii) &amp; 19(1)(u)? If it is then the clause needs to be re-written to specify it is for fans.</p> <p>The way it currently reads, it could in fact be interpreted, as if a stopping fails in a development panel causing air to short-circuit in the panel there should be a system to trip power to that panel i.e. like a QLD ERZ system but with air quantity sensors instead of CH4 sensors.</p>
77	<p><b>Post Incident Gas Monitoring – An explosion or Fire Proof Gas Monitoring System</b></p> <p>The intent of having gas monitoring survive an explosion is to be applauded, unfortunately there is no clear way to currently achieve this. Before this can be made law there needs to be a guideline on how an Operator can comply with this requirement otherwise Operators cannot be clear on how to achieve ALARP.</p>
74(2)	<p><b>Continuous Gas Monitoring</b></p> <p>The clause is not clear on whether a "continuous" i.e. realtime system is required or whether a "continual" system i.e. a tube bundle (that samples every 15mins but has a delay of 1hr due to draw time is required). It is also somewhat confusing over what</p>

	<p>gases need to be monitored.</p> <p>i.e. Carbon Monoxide, Carbon Dioxide, Oxygen and Methane must be monitored “continuously” to calculate Graham’s Ratio, CO/CO<sub>2</sub> ratio. “Continuously” under dictionary definition and QLD legislation requires a realtime sensor. However “Realtime” is then specifically mentioned as only required for methane. Gas content is then defined as omitting CO<sub>2</sub> unless stipulated by the regulator.</p> <p>It appears the current QLD legislated requirement for continuous realtime for CO, CO<sub>2</sub>, O<sub>2</sub> &amp; CH<sub>4</sub> is trying to be implemented but the wording makes it unclear whether the requirement is to only have realtime for CH<sub>4</sub> and rely on tube bundle for the other gases.</p> <p>It is recommended that the clearly worded “QLD CSMH Regulation Part 7 – Gas Monitoring” be adopted to ensure inter-operability between NSW and QLD and to eliminate the current confusing wording.</p>
63(3)G & 63(P) & Sch7 5(3)	<p><b>Failure of Main Fan/s</b></p> <p>There are three mentions addressing safety of personnel in event of main fan failure. Also there is a requirement to have the “procedure/s” to be in both the Ventilation Control Plan and the Emergency Plan.</p> <p>Under current industry precedent and practice the “procedure/s” are generally documented in a Trigger Action Response Plan (TARP) document, so practically is a separate document that would merely be referenced by both plans. All three clauses should be combined into a single clause and it should state the document should be a TARP.</p>
60(2)(F) & 63(3)N	<p><b>Procedure for Starting Fans, including main fans</b></p> <p>The same requirement for a procedure is mentioned twice. This is unnecessary duplication and addressing this would streamline the regulations.</p>
74(1)(b)(ii) & 74(1)(e)	<p><b>Specify the alarm level for each type of Gas being Monitored</b></p> <p>The same requirement for an alarm level is mentioned twice. This can be corrected to avoid unnecessary duplication and streamline the regulations.</p>
72(3)	<p><b>Ventilation Auditor – needs to be independent Auditor</b></p> <p>The previous requirement for a Ventilation Auditor under the NSW CMHS Regulations has been modified slightly as the Auditor is now listed as a Statutory Position for the mine. This is taken to imply that the Auditor could be a person employed by the mine. This would question the independence of the Auditor. The issue needs to be clarified to ensure the independence of the Auditor position.</p>
60(2)E	<p><b>Fan is not Damaged in the Event of an Explosion</b></p> <p>On 28<sup>th</sup> June 2013 (In response to the Pike River Royal Commission findings) the New South Wales and Queensland Inspectorates notified Coal Mine Operators that aspects of the relevant US standard 75.310 should now apply to new fan installations within these states. The essence of this provision with respect to main mine surface fans, is that:-</p> <p><i>Each main mine fan should be:-</i></p>

- *Protected by a weak wall(s) or explosion doors in direct line with the shaft or entry.*
- *Offset by at least 15 feet (or 4.57m) from the nearest shaft wall or entry line, and*
- *The cross sectional area of overpressure relief (that is, the weak wall(s) or explosion doors) shall be at least 100% of the area of the shaft or entry.*

To clarify this issue the regulations should clearly state that existing fan installations (which generally were built to comply with NFPA 68) should be excluded under a “Grandfather” clause, and the USA 75.310 legislation only applies to new fan installations.

This a poractical solution as retrofitting existing fans does not prevent an explosion from occurring, and prevention of an explosion should be the primary objective.

## **Peabody Energy Australia Submission Points**

The following information is based on information provided from the Discussion Paper and the content of the Public Consultation Draft Work Health and Safety (Mines) Regulation 2014.

**This information has been submitted by Peabody Energy Australia and is fully supported by Wambo Coal.**

### **Section 2.3 Legislative Framework**

#### **Discussion Point**

*What impact will one regulation with clearly defined provisions for separate mining sectors have on understanding and implementing the new WHS (Mines) legislation?*

Peabody Energy Australia supports the single mining regulation. One Regulation will assist mine operators that conduct mining activities across a range of minerals (coal and metals). It means that there is less likely to be confusion across mineral boundaries and will assist personnel who transfer between industries. The specific requirements for underground mines are addressed in detailed Divisions and Subdivisions of the Regulation.

The proposed legislative arrangement addresses the difference in regulatory requirements between minerals (coal and metaliferous) whilst maintaining a consistent process to achieve the required outcomes. Peabody supports this arrangement. See our comments in the Other Comments section regarding differences across State jurisdictions.

In relation to Health and Safety Management, there is a curious observation in relation to the relationship between the Regulation, Code of Practice and other relevant standards (Australian Standard). There appears to be no consistent structure or relationship between any of the relevant documents. This is indicative of a potentially larger problem in considering the inter-relationship of different requirements from different documents. It appears that each document is exclusive, rather than being appropriately related. This adds a level of complexity for a compliance approach in contrast to a cascading level of requirements that will assist in the establishment of an effective management process for a hazard.

### **Section 2.4 Scope and Application**

#### **Discussion Point**

*What impact will the definition of 'mine', 'mining operations', 'mining workplace' and 'underground mine' have in helping you understand the application of the new WHS (Mines) legislation?*

The definitions of the terms are very important. There is also value in stating what activities do not constitute mining operations.

*What activities do you believe should not be captured by the application of the new WHS (Mines) legislation?*

Those activities already excluded by section 11 of the WHS (Mines) Act (which include incidental extraction of minerals in the course of civil construction, railway or railway operations to which the Rail Safety National Law, those activities related to a public road, activities associated with electrical infrastructure that is owned by a network operator or retail supplier) should be excluded.

Rail operations not under the control of the mine operator at the mine should be excluded from the mine. Loading of the train is under the control of the mine operator, but the transport of the coal by the train operator is not under the control of the mine operator.

When a mine operator provides accommodation at a mine, the provision for the construction and operation of the accommodation facility should be specifically excluded from the WHS (Mines) legislation as the unique hazards of mines are not present.

Construction activities for fixed and mobile plant where they can be separated or segregated from mine activities and the unique hazards of mines are not present. The WHS legislation should then apply as for any other business activity in NSW.

Farming Activities where they can be separated or segregated from mine activities and the unique hazards of mines are not present. The WHS legislation should then apply as for any other farming activity in NSW.

*What are stakeholders' views on the list of certain provisions that won't apply to non-mechanical exploration?*

For exploration activities where the unique hazards of mines are not present the WHS should then apply as for any other business activity in NSW.

## Section 3.3 Safety Management Systems

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### Discussion Point

*What are stakeholders' views on the flexibility that the provisions provide with respect to specifying the detail required in the SMS?*

The WHS (Mines) Regulation attempts to provide the flexibility to allow a mine operator to develop a system for the control of hazards at their mine, but fails because it prescribes the content of the system in Clause 14. The regulation states:

**14 Content of safety management system** (cl 622 model WHS Regs)

- (1) The safety management system document for a mine must set out the following:

A mine operator has complied when they have addressed the requirements of Clause 14. The Regulation makes no reference to the Work Health and Safety Management Systems in Mining Code of Practice. Similarly, no reference is made to the Australian Standard for Occupational Health and Safety Management Systems (AS 4804).

Neither the Regulation nor the Code of Practice is structured in a quality controlled systematic manner which demonstrates alignment with the Australian Standard reference. Each document is based on a compliance model which does not stimulate or motivate the development of an effective management process at a mine. The prescribed content defeats the management process, drives compliance rather than effective management, and may not achieve an acceptable level of risk achieved through continual improvement.

The Regulation would be far better to not prescribe the content of the system, rather make reference to the appropriate reference material (AS4804) is more systematic than the Code of Practice). This would achieve the intent of gaining flexibility in the system.

In addition to only prescribing minimum content, the Regulation provides no guidance on how to achieve the intended aim. Reference to the standard would provide not only the system structure and requirements but, guidance on how to achieve them.

## Section 3.4 Principal Mining Hazards

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### Discussion Point

*What are stakeholders' views on the inclusion of subsidence as a principal mining hazard?*

Subsidence is not a Principal Mining Hazard. A review of fatal mining events does not identify subsidence as a Principal Mining Hazard. There should not be a Subsidence Principal Mining Hazard Management Plan. Subsidence may require specific control measures, but it is not, by definition, a Principal Mining Hazard.

Some of the other topics identified as Principal Mining Hazards are also not clear.

Dangerous Accumulations of Coal dust should be a stand-alone hazard requiring its own Principal Mining Hazard Management Plan. The plan should describe measures to prevent and limit a coal dust explosion. Coal dust explosions should be separate to gas explosions.

Explosive and Toxic Accumulations of Gas is a Principal Mining Hazard. It has 2 primary risks, Flammability and Toxicity (including oxygen deficiency). Explosive and Toxic Accumulations of Gas should be more prominently identified as a hazard rather than being called air quality or airborne contaminants.

Respirable dust should be removed and included within the Health Control Plan.

Fire should not be included with explosions. A fire is just one potential source of ignition for an explosion. Mine fires should have a stand alone Principal Mining Hazard Management Plan.

Spontaneous Combustion is not a Principal Mining Hazard. Spontaneous combustion is a mechanism to start a mine fire, the same as any other potential source of fire, and should principally be included within the Fire PMHMP. Spontaneous combustion does not result in deaths. The deaths are caused either by the fire, toxic gas (products of combustion) or explosion. Of the three QLD mine explosions resulting from spontaneous combustion (Box Flat 1972, Kianga 1975 and Moura 2 1994) spontaneous combustion didn't kill anyone. It was the ineffective process of treatment of the fire which resulted in the initiation of a gas or dust explosion resulting in the deaths of the men (and loss of the mines). On each occasion it was the sealing process that resulted in an accumulation of flammable gas at the location of the fire resulting in an explosion. Spontaneous combustion management is part of ventilation control, gas management, and fire management. Spontaneous Combustion is not a Principal Mining Hazard. Explosive and Toxic Accumulations of Gas (both flammable and toxic) and Dangerous Accumulations of Coal dust are the principal mining hazards that must be managed to prevent multiple fatality events.

Roads and Other Vehicle Operating Areas is not a Principal Mining Hazard. We suggest the title should more correctly be something like "Mobile Equipment Interactions and Loss of Control".

Clause 5(j) refers to Clause 34 of the WHS regulations which refer to "...risks to health and safety" which are not necessarily "principle mining hazards" so this reference probably requires

more scrutiny to ensure it has no unintended consequences. The location of Clause 5 within the document is curious and would seem more logically located immediately prior to Clause 22.

Clearer logic, more thought and consideration should be given to the accurate identification and technical titles of Principal Mining Hazards.

Clause 22 requires a PMHMP for each PMH associated with mining operations at the mine. Clause 5 does not have that same qualification to prevent unintentionally requiring a PMHMP for a particular PMH that does not exist at a mine. For example, requiring an open cut mine to develop a PMHMP for mine shafts and winding systems.

On a broader context since Clause 22 requires identification of all PMH's associated with mining operations at the mine, and in line with our other comments about risk based development of a SHMS being in conflict with an increasing level of regulation prescription, it may not be appropriate to prescribe what the PMH's should be in Clause 5.

## Section 3.5 Principal Control Plans

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### Discussion Point

*What are stakeholders' views on the matters required to be addressed in each of the principal control plans?*

Peabody Energy Australia supports the development of Principal Control Plans as part of the SMS for a mine. The prescribed content of Principal Control Plans is not supported for a number of reasons:

- The prescribed content drives compliance rather than effective management of identified risks.
- The prescribed content of the Regulation is not consistently aligned to the requirements of Codes of Practice. Where there is a Code of Practice, the Regulation should not prescribe matters to be included, rather make reference to the Code of Practice.

Similar to the process described previously for the development of the SMS, there is a fundamental issue with the prescription of matters to be addressed in control plans. The prescribed content of the plans does not make reference to the processes required by the SMS, including risk management processes.

Although the note in Clause 13, paragraph 8 (below) attempts to give some guidance that a SMS document is not required to be set out in the same way in which matters are prescribed in the regulation, the prescribed matters drive compliance rather than requiring the mine operator to establish controls based on risk management practices developed from the SMS.

(8) The safety management system must be documented.

**Note.** A safety management system document is not required to be set out in the same way in which matters are addressed in this Regulation so long as the substantive matters required by this Regulation are properly addressed. It may be set out in one or more documents or may be placed in documents that also deal with other matters. For example a principal mining hazard management Plan may be combined with a principal control plan.

Additional advice is provided in specific clauses which further identify specific prescribed matters are only minimum requirements, such as:

- (2) The ventilation control plan must describe all control measures implemented in relation to ventilation at the mine.
- (3) Without limiting subclause (2), the ventilation control plan must include a description of the following, if applicable to the mine:

The prescribed content of Principal Control Plans is not conducive to the risk management principles, driving compliance and potentially undermining the effective management of hazards at the mine.

The structure of Part 2, Divisions 2 through 6, and their referred Schedules is confusing and complicated. Some specific observations are as follows:

- The term “Principal Control Plan” is too close to “Principal Mining Hazard Management Plan”. Principal Control Plans are listed under a title for Division 3 called “Other Plans”. We suggest that the term “Principal” be reserved for use with “Principal Mining Hazards” and that the Division 3 title be called “Other Management Plans”, and “Principal Control Plans” be simply called “Management Plans”. The term “management” better explains the intent of these documents than “control”.
- It is questionable why Clause 26 Contractor Health and Safety Management Plan is separated from Clause 25.
- It would make it easier for reference if at least the following sections were combined to avoid chasing information throughout the document:
  - Health Control Plan 25(3) and Schedule 2(1)
  - Mechanical Engineering Control Plan 25(4), Schedule 2(2), Clause 29 and Schedule 1(3)
  - Electrical Engineering Control Plan 25(35) and Schedule 2(3)
  - Explosives Control Plan 25(6) and Schedule 2(4)
  - Ground & strata instability Clauses 30, 31 and Schedule 1(1)
  - Movement of mobile plant Clause 28 and Schedule 1(4)
- Is the distinction between Divisions 3 (Other Plans) and Division 4 (Specific Control Measure) and Division 5 (Specific Control Measures – Underground Mines) really necessary? We can see what is intended by this but question whether it really achieves anything other than increased complexity. Suggest that the whole section be simplified to Management Plans – All Mines, and Management Plans – Underground Mines.

In the Explosives Control Plan – the definition to a “precursor” is not that clear even within the reference Explosives Act 2003 – need to make sure people do not connect clearing, drilling, etc. with this.

## Section 3.6 Contractor Management

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### Discussion Point

*What are stakeholders’ views on the arrangements for contractor management at a mine?*

Peabody Energy Australia supports the requirements for Contractors to develop and implement a contractor health and safety management plan. Peabody supports the requirement that the contractor’s duty is to implement the contractor health and safety management plan.

Other observations on this section are as follows:

- Should the title be “Contractor Mining Health and Safety Management Plan” to distinguish from other narrower contractor activities that may be undertaken at a site?
- Clause 26(2) is repetitive with Clause 26(4)(b).

- Further clarification is required to distinguish this, or explain the relationship between the Contractor Health and Safety Management Plan and the Safety Management System from Subdivision 2 where the contractor undertakes all activity at a mine. Clause 14(g) refers to “if a contractor is working or likely to work at a mine” is considered to be much broader than under Clause 26 which is for carrying out mining activities. Need to avoid the requirement for very small contractors, who may be undertaking a very narrow scope of activity, for example specialist mechanical fault finding, to be required to complete a Contractor Health and safety Management Plan.
- Whatever changes made should be consistent with the definition of a contractor in Part 1(3).

## Section 3.7 Specific Control Measures

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### Discussion Point

*Are there any specific control measures that are not required in the regulation (for example, where the matter could be addressed in a code of practice which could set out what is reasonably practicable to manage those risks)?*

Peabody Energy Australia supports the industry arrangements with the use of Codes of Practice. However, Peabody does not support arrangements which create duplication of regulatory requirements and a Code of Practice, Safety Management Systems for example. If the subject matter requires Regulatory control as well as a Code of Practice, the code must be consistent with the regulation. Duplication of matters is confusing and contradictory. Where a Code of Practice is established, regulatory requirements should make reference to the Code of Practice, not establish another set of compliance standards. We support the Codes of Practice's if they are exactly the same in all states. If they are written to align with the model legislation (& NSW's) but won't align with the other states we just have another set of documents that are different which just magnifies the work people working across the borders needs to do.

There may be issues with the Codes of Practice. They are not referenced in the Regulation and it may be difficult for a person to know of a Code of Practice's existence if the Regulation does not make reference to it for additional requirements for risk control. The Codes of Practice (above) are still in draft from 2011, suggesting that there may be an issue with their approval / application. Peabody does not support the duplication of Regulatory requirements with Codes of Practice.

In Clause 27 Communications between outgoing and incoming shifts – (c) should be “relevant content” instead of “content” so that only information that is relevant to the particular work group is required to be communicated to avoid unnecessary information. Agree with the concern of the NSW MMA about the requirement drawing the supervision away from operational activities in order to complete the reporting process in time for the next shift – verbal in the first instance may be more appropriate. Why is it necessary to include (b), and (d) over and above the model WHS regulations. If it is really required then the model WHS regs should be modified for every business activity and not just mining. The extra requirements are not seen to practically lead to an improvement in H&S beyond proving another mechanism for the regulators to fine individuals over petty administrative mistakes.

Should Clause 28 be entitled and extended throughout the section as “Operation of Mobile Equipment” and not “Movement”? The existing title may be interpreted by some as being quite narrow to just the transfer of equipment from one place to another. Mobile plant requires definition. For example is a track mounted crusher, that is relocateable albeit it infrequently and very slowly, considered to be mobile plant? Similarly, is a dragline considered mobile plant?

Clause 30(2) requires improvement to avoid the need for inspections in areas where access is denied such as sealed areas, areas of such poor ground conditions that access for inspection is not safe, etc.

Clause 31(2)(a) requires improvement to avoid sites that are not reasonably exposed to the risk of seismic activity being required to have seismic monitoring equipment. There seems to be confusion between seismic activity and mining induced stresses and movement of ground. For example Clause 31(2) (c) and (d) probably better belong in Clause 30 rather than Clause 31.

Clause 33 seems misplaced and should be included in Clause 25(5) if that level of prescription is desired. Clause 33(d) requires improvement to ensure this requirement is not interpreted to apply following re-energisation after routine maintenance or repair of the circuit.

The waiting periods prescribed in Schedule 3 relating to Clause 34 in some seem excessive. For example, 12 months to use HV Plant and cable in a hazardous zone.

Clause 38 Inspection Plan seems to be misplaced by being within the Specific Control Measures section and should perhaps be in the Division 3 – Other Plans section

One would assume that all of the requirements of Division 4 Specific Control Measures would be contained within the relevant PMHMP as required in Division 2. That section requires the operator to consider and control all of these things and their prescription does not align with the responsibility of the operator from Division 2.

## Section 3.7.1 Air Quality

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### Discussion Point

*What are stakeholders' views on retaining the existing exposure standard of 2.5mg of respirable dust per cubic metre of air?*

Peabody Energy Australia does not support the maintenance of 2.5 mg/m<sup>3</sup> limit for respirable coal dust. If the aim of harmonisation of safety laws in Australia was to gain consistency for the management and control of workplace hazards it would be appropriate for the NSW legislation to use the exposure standards stated in Workplace Exposure Standard for Airborne Contaminants. Peabody supports the use of the National Standard. It is difficult to comprehend that a limit of 2.5 mg/m<sup>3</sup> is equivalent to 3 mg/m<sup>3</sup> limit. This would indicate that there is an error with the sampling technique.

Peabody supports the management and control of mine workers from respirable coal dust, but believes this should be conducted in a nationally consistent manner at the national standard of 3mg/m<sup>3</sup>.

## Section 3.7.2 Movement of Mobile Plant

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### Discussion Point

*What are stakeholders' views on the inclusion of NCDIs 16.3 to 16.7, 16.9 to 16.14 and 16.15 (8) and (9) in the WHS (Mines) Regulation, as opposed to inclusion in a code of practice?*

Peabody Energy Australia supports the majority view of the tri-state Working Group to make provision in the Code of Practice for the matters not covered in the model WHS (Mines) Regulation. This is consistent with the previous comments in relation to the legislative framework, involving the use of the Regulation and Codes of Practice. Rather than burdening

regulatory requirements, details for the control of hazards should be contained with appropriate guidance in the relevant Code of Practice.

Matters such as the requirements of the Inspection Program for roadway and vehicle inspection should be included in the detailed requirements of the Inspection Program (Clause 85) and not in the requirements of the Principal Mining Hazard Management Plan.

The failure to clearly specify Regulatory requirements or create duplication by inserting matters in multiple locations generally adds complexity and potential confusion.

Most of the content of Clause 28 appears to be adequately covered by the Code of Practice and it does not seem logical for that to be repeated.

## **Section 3.8 Specific Control Measures – Underground Mines**

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### **Discussion Point**

*Are there any specific control measures that are not required in the regulation (for example, where the matter could be addressed in a code of practice which could set out what is reasonably practicable to manage those risks)?*

Peabody Energy Australia supports the legislative framework utilising regulatory requirements and Codes of Practice. Where a Code of Practice has been identified there should be less regulatory requirements and better use of the Code of Practice. Duplication of requirements largely makes the Code of Practice less relevant as operations focus more on the Regulatory requirements. Topics that are the subject of Codes of Practice should have less regulatory requirements. Examples were mentioned previously in relation to the content of the SMS. The concept is applicable to all hazards or processes for which a Code of Practice has been developed. The Codes of Practice should be consistent between the States to avoid complication and confusion for those companies that also have operations outside NSW.

## **Section 3.8.2 Winding Systems**

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### **Discussion Point**

*What are stakeholders' views on the inclusion of NCDIs 15.9 to 15.15 in the draft WHS (Mines) Regulation, as opposed to inclusion in a code of practice?*

Consistent with previous statements, Peabody Energy Australia supports the effective use of nationally consistent Codes of Practice by including additional matters in the Code of Practice rather than increasing the regulatory requirements.

## **Section 3.9 Specific Control Measures – Underground Coal Mines**

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### **Discussion Point**

*Are there any specific control measures for underground coal mines that should not be required in the Regulation (for example if a code of practice is the most suitable place to set out what is reasonably practicable to manage those risks requirement)?*

See comments above in relation to the use of Codes of Practice.

*Is a transition period of 12 months appropriate for the introduction of post-incident monitoring arrangements?*

Peabody Energy Australia believes that 12 months is not appropriate for the introduction of post incident monitoring arrangements. Additional time may be required for the design, quote, budget approval, procurement and installation phases to be completed. There may be practical reasons why the devices required for compliance to this regulation are different to those already in place rather than simply just extending them.

*What are stakeholders' views on the appropriateness of the 'reasonable steps' qualifier in the provisions above?*

Peabody Energy Australia supports the statement of reasonable steps in the above listed provisions. A defined course of action or specific requirement may not be applicable to every situation. It is appropriate for a qualifier of "reasonable steps". For non-safety critical activities reasonable steps is a generally accepted community expectation.

## **Section 3.9.3 Search Powers for underground coal mines**

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### **Discussion Point**

*What are stakeholders' views on the inclusion of NCDs 31.5 and 31.6 in the WHS (Mines) Regulation?*

Peabody Energy Australia supports the inclusion of search powers for mine operators in the WHS (Mines) Regulation. Prohibited items may be taken into underground coal mines and result in catastrophic consequences. The ability to conduct searches for prohibited items provides some motivation to discourage mine workers from taking prohibited items into the mine. The power to conduct searches for prohibited items must be included in the WHS (Mines) Regulation and be exercised by mine operators to prevent those items from being taken into the mine. Given the negative experience elsewhere of requiring agreement with workers on safety critical matters it is unlikely at some sites that agreement would be reached, if at all, in a cost and time effective manner.

## **Section 3.11 Emergency Management**

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### **Discussion Point**

*Is a transition period of 12 months appropriate to enable mines to comply with the self-rescuer provisions?*

Peabody Energy Australia believes that a 12 month period is appropriate to comply with the self-rescuer provisions, subject to the availability and supply of a suitable number of the self-rescuers to address the industry's increased demand.

## **Section 3.11 Additional emergency response provisions**

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### **Discussion Point**

*What are stakeholders' views on the inclusion of NCDs 27.23 and 27.24 in the WHS (Mines) Regulation, as opposed to inclusion in a code of practice?*

Peabody Energy Australia supports the use of the Code of Practice to include the additional emergency response provisions. The use of air bags, important as it is, is only one process for one type of incident. It is unreasonable to include all emergency provisions for all types of events in the WHS (Mines) Regulation so it is more appropriate to include the requirement in the Code of Practice. The provision of such emergency equipment should be determined by the consideration of risk at individual mines.

It is inappropriate to state specific performance requirements for the provision for an ambulance for transport. An ambulance reasonably means a fully fitted paramedic dedicated vehicle used by the relevant ambulance authority. It would be more appropriate to make reference to an ability to transport an injured or sick person, using an appropriate vehicle available for reasonable response, without making reference to the type of transport available.

Peabody Energy Australia supports the majority view of the legislation working group that these particular matters (NCDI 27.23 and 27.24) should be included in the applicable Code of Practice and not in the WHS (Mines) Regulation.

### **Discussion Point**

*What are stakeholders' views on the appropriateness of the recommended testing times for the emergency plan?*

Peabody Energy Australia supports the annual testing of the emergency management plan and its provisions. Testing of the emergency plan at 6 monthly intervals is too frequent and would likely result in superficial compliance testing rather than effective testing of the plan. The WHS (Mines) Regulation (Clause 92) requires annual testing. MDG 1020 requires exercises on a systematic basis. Emergency training is required on at least an annual basis. The only way that the frequency could be increased would be if there were a scale of exercises, similar to the Queensland 4 Level exercise model. A major exercise could be conducted once per year, other smaller exercises (minor exercises) could be conducted more frequently. Peabody supports maintaining mine emergency exercises at an annual frequency. The 3 monthly refresher training requirement in a simulated work environment for the donning and changeover of SCSR's is impractical and seen to add little value when conducted at that high a frequency. The requirement for a SCSR simulator to deliver oxygen is seen to be potentially high cost with little value added to the training, particularly at the proposed high frequency of refresher training.

### **Discussion Point**

*What are stakeholders' views on the proposed additional regulatory provisions regarding emergency response identified through analysis of the Pike River Royal Commission Report?*

Peabody Energy Australia supports the review of the NSW Trade and Investment capability following the recommendations from the Pike River Royal Commission. The lessons from Pike River should not be lost on the Australian coal mining industry.

- the provision of a functional area in the mine safety inspectorate during an emergency (as defined in the State Emergency and Rescue Management Act 1989) if NSW Trade & Investment were to become a combat agency

This provision should ultimately be available to the government. It is certainly not the case of an event that is being managed by a mine operator, but in the case where all control is lost and state resources are required to restore control, (following a disaster) it would be of value to the industry for the inspectorate to be the combat agency. These arrangements would certainly be more favorable than the Pike River experience where the police assumed control of the event and had poor control of the emergency. It is likely that this power would not be made under a Regulation and that the empowerment of an Inspector would be under an Act.

Any power to take control of an event should have some clear and transparent guidelines. At Pike River there was confusion as to who was the incident controller almost from the start. If the inspectorate did become the combat agency some strict definitions must be established for the assumption of control.

- the requirement for mine plans to accommodate the arrangements for emergencies as outlined in the State Emergency and Rescue Management Act 1989 and State Emergency plans made in accordance with that Act

Peabody supports this requirement. This is not only of value to state emergency functions it is of value to the site emergency management practices, regardless of government intervention.

- the inclusion of specific regulatory functions and powers for NSW Trade & Investment that are triggered by emergency or sub-emergency events for prevention, preparedness, response and recovery (particularly the response and recovery phases)

In the absence of any detail of functions and powers it is difficult to make constructive comment. Functions and powers related to emergency control should be established through industry consultative arrangements.

- the inclusion of a requirement for mine operators to notify the regulator of the emergency plan testing schedule so that an inspector may attend

Peabody Energy Australia does not support this proposal to notify the regulator of emergency plan testing. Inspectors may inquire, offer to assist or participate through the normal mine inspection processes. A regulatory requirement to notify the inspector of an emergency plan test is an unnecessary use of regulatory function.

- the inclusion of a requirement for any mines rescue service to notify the regulator immediately it becomes aware of an incident that requires, or is likely to require, a rescue at a mine

Peabody Energy Australia does not support a regulatory requirement for mines rescue services to notify the regulator of a potential incident. The duty to notify the regulator is placed on the Mine Operator. It is the Mine Operator who is best placed to provide accurate information about the nature and possible cause of any incident. Relaying information through emergency services is fraught with potential error with information being distorted or confused. Mines Rescue would also be less likely to be able to provide any additional information potentially required by the regulator.

Making a phone call to provide information to the regulator might also be a distraction to the Mines Rescue Service who is focused on implementing emergency response in a timely manner. Peabody does not support a requirement for mines rescue to notify the regulator of an emergency event.

- the inclusion of a requirement for mine operators to notify the regulator when there has been any activation of the emergency plan, irrespective of whether the event triggers a prescribed incident notification

Peabody Energy Australia does not support this requirement. Notifiable incidents are already clearly documented. The mine's SMS has been developed to manage emergencies. The implementation of the mine's SMS for should not automatically require the notice to the regulator.

- to ensure that emergency response is effective and unimpeded, there be a mandatory requirement for people, when requested, to provide information that is response critical to the regulator during an emergency.

Peabody Energy Australia supports this requirement, subject to the qualification of being response critical. At a response critical time the information provided to the regulator must also be exempt from any legal proceeding, so as to not deter a person from providing that information. At a response critical time, a person does not have the natural right for legal advice or normal investigative processes. For response critical information to be provided openly it is only reasonable that a person providing the information not be concerned about being prosecuted for the information provided. Without this, there will always be a reluctance to provide full and open information. Peabody supports a requirement for the provision of information provided that it is accompanied with an exemption from legal proceedings.

## Section 3.12 Information Training and instruction

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### Discussion Point

*What are stakeholders' views on the need for specific provisions requiring the display of health and safety information in a prominent place in a workplace and requirements for mine operators to take all necessary steps to draw it to the attention of workers?*

Peabody Energy Australia does not support this requirement. Clause 27 and the Clauses contained within Division 7 concerning shift handover communications and information, training and instruction already seem to adequately cover this matter. Peabody provides such information as a matter of course for its employees and contractors. It is unrealistic that this is an issue limited to mines and that it should be a matter addressed in the WHS Regulation, rather than the WHS (Mines) Regulation.

The general Work Health and Safety Consultation, Co-operation and Co-ordination Code of Practice provides for the communication of information including the use of noticeboards. Including a specific clause for the use of a particular noticeboard is not something that should be regulated.

## Section 3.13 High Risk Activities

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### Discussion Point

*What are stakeholders' views on the waiting periods for high risk activities notification?*

Peabody Energy Australia does not support the waiting periods for high risk activities. The waiting periods establish a potential delay to the operation of a mine. If the notification of intent to undertake a high risk activity is not a request for approval, and no approval is given, the period of waiting is of little value.

If the purpose of the waiting period is to allow the regulator to review and evaluate the information provided for the completion of the high risk activity, it must follow that the regulator must evaluate the notice against some criteria. It would be better if those criteria were published and the notification period eliminated.

If the waiting periods remain in the final draft there are certain of the prescribed times that seem illogically long. For example, those that have a 12 month period.

*Is a transition period of nine months appropriate for the commencement of the new high risk activities notification scheme for metalliferous and extractives mines?*

Not relevant to Peabody so no comment will be issued.

## Section 3.14 Health Monitoring

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### Discussion Point

*What are stakeholders' views on the inclusion of health assessment provisions in the draft WHS (Mines) Regulation?*

Peabody Energy Australia supports the inclusion of Health Assessment Provisions in the WHS (Mines) Regulation. As the Mine Operator, Peabody must have the power, under the WHS (Mines) Regulation to require a mine worker to attend a Health Assessment in order to determine their fitness to carry out a mining activity at the mine. The assessment must be conducted by a suitably qualified medical practitioner. The Health Assessments must be carried out before the worker commences work at the mine and periodically dependent on the risk from the activities and the condition of the worker. A failure to conduct Health Assessments may unnecessarily place workers at risk. The current wording of Clause 108 is seen to restrict the power for the operator to monitor for adverse effects on the worker's health from hazards outside the mine. So, for example, if an individual is a heavy smoker and his lung function is becoming seriously impaired to the point that he is at risk of injury due to the rigour of his work exposure, then the operator may not have the power to investigate this condition.

*What are stakeholders' views on the inclusion of NCDIs 26.20 to 26.22 in the draft WHS (Mines) Regulation?*

Peabody Energy Australia does not support the inclusion of NCDIs 26.20 to 26.22 in the WHS (Mines) Regulation. The requirement to establish testing regimes in agreement with the majority of workers at the mine has been extraordinarily difficult in Queensland mines since its creation. It has resulted in numerous court cases and ongoing disputes at mines. The mine operator must have the power to establish an effective testing regime at the mine for persons at the mine.

If the proposed provisions were included, the inclusion of descriptive words like "reasonable timeframe" is not supported. How long is a reasonable timeframe? This will be the subject of disagreement itself. Any timeframe must be clearly specified.

The system for the assessment of drugs at the mine must be capable of reliably detecting substances that affect the performance of workers at the mine. The implementation of a system that does not reliably detect these substances is not capable of achieving an acceptable level of risk.

## Section 3.17.1 Provision of Information

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Peabody Energy Australia does not support the Provision of information to the Industry Safety and Health Representative, in the case of a coal mine, that must be provided to the regulator. The industry safety and health representative should be able to inquire about and have reasonable access to the information, but not be provided with it as a regulatory requirement. There has been experience in other regimes where ISHR's, or their equivalent, place extraordinary, disruptive and costly demands on sites for copies of information and/or transmit the information to others parties for motives other than improving safety and health. There is a legitimate question to be answered as to why this requirement is targeted at a coal mine and not all mines.

## Section 3.21.2 New statutory functions

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## Discussion point.

*Is three years an appropriate period before a practising certificate should be renewed?*

Peabody Energy Australia does not support the renewal period concept. This is seen to introduce yet another significant administrative and cost burden on those individuals and operators with questionable impact on improving safety and health. If the motive is purely to ensure an appointed person's knowledge of his statutory duties remain current there may be more effective ways to achieve that. For example, completion of certain refresher training modules to maintain certificate currency. In any case there needs to be a clear and open disclosure on what the determining criteria may be for granting and renewal of certificates. Is there clear evidence to indicate that a person's lack of current knowledge on his statutory duties have directly contributed to an incident or is this simply one of the draft regulation's authors hobby horse? Is the real issue the effectiveness of the initial certificate competency assessment rather than a failure to maintain currency of the knowledge? Clause 140(c) effectively means that NSW only respects an interstate certificate for a maximum of 6 months. Surely 140(a) and (b) are sufficient if true respect for interstate competencies is the intention.

*What are stakeholders' views on whether a person who might not otherwise be an officer of the PCBU should have the duties of an officer under the WHS Act by virtue of being the site senior executive of the mine?*

The inclusion of clause 134(6) in the Regulations is not appropriate. As its wording suggests, and the note points out, it is the WHS Act that needs to be amended if the definition of officer is to include the site senior executive of the mine, and inclusion of (6) in this clause does not create that amendment.

The statutory role of site senior executive (SSE) of a mine is (or should be) limited to the oversight of practices at the mine with the aim of ensuring the health and safety of persons at the mine. The person who performs the role of SSE can be but need not be the person who has overall general management responsibility for the mining operations. To be an officer of the PCBU, the person needs to have sufficient authority to dictate what does and does not happen in the name of the PCBU, including the ability to direct persons, determine how money is spent, and how the mine is operated. The site senior executive does not necessarily have that scope of authority or need that scope of authority, and the ability of the site senior executive to perform the statutory role can be influenced by the person with the most managerial authority at the mine, the general manager. Having said that, it is possible that even the general manager of a mine might not in fact have sufficient authority to be an officer of the PCBU. In summary, it is inappropriate for the Act (or the Regs) to deem that a person fulfilling a particular role is an officer.

*What are stakeholders' views on the adoption of the underground mine supervisor statutory functions?*

Peabody Energy Australia does not support the adoption of underground mine statutory functions. The mine operator must have the duty to determine management structure requirements and determine how best to supervise mining operations. This may include the use of persons with specialist skills in key functions that cannot be determined by statutory functions.

*Is three years an appropriate transitional period for the commencement of the requirement for site senior executives and underground mine supervisors?*

Peabody Energy Australia supports a 3 year implementation period, subject to the detailed prescription of the competency requirements for the required positions. For example, if an SSE of an underground mine needs to also be an Underground Mine Manager a longer transition

period may be appropriate given the length of time that may be required to obtain such qualification.

*What are stakeholders' views on the proposed additional statutory functions in the list above?*

Peabody Energy Australia does not support the inclusion of additional statutory functions. Mine operators must have the ability to determine supervisory requirements for their operations. Statutory functions limit the availability of suitably capable persons from performing roles which they may otherwise competently perform. It is noted that the function of the SSE significantly differs to that which exists in Queensland. The NSW role seems to be more a compliance officer who reports deficiencies to the Mine Operator for action. The State differences in duties for this role in particular are not aligned with the harmonisation objective.

### **Section 3.21.3 Directions to statutory function holders**

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#### **Discussion Point**

*What are stakeholders' views on the inclusion of a provision that prohibits a person from making a direction to a statutory function holder with respect to a technical matter pertaining to the statutory function holder's area of expertise against the advice of the statutory function holder?*

Peabody Energy Australia supports an inclusion for the protection of decisions made in relation to health and safety by statutory positions. If there is conflict between statutory officials at the site on a particular issue, the highest ranking statutory official responsible for the specific technical area of responsibility, or overall responsibility, should have the ultimate decision making authority if they carry the ultimate responsibility. It was clearly recommended in the Box Flat Inquiry report in 1972.

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| <p>9. That any person who is appointed to make technical decisions that effect the Manager's authority regarding the safety of the mine must be qualified as a Manager under the Act and shall be responsible under the Act.</p> |
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The principle has been held since. Whilst others may be able to give advice, it is the statutory position that is responsible for the safety of the mine or part of the mine.

### **Section 3.22 Savings and transitional arrangements**

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#### **Discussion Point**

*What are stakeholders' views on the adequacy of the transitional arrangements for compliance with the various regulatory provisions in the draft WHS (Mines) Regulation in appendix B?*

The compliance period of 6 months for Clauses 13-18, 23-26, 87-94, Clauses 13-19, 23-26, 87-94, Clause 26, Clauses 13-18n 23-24, 25-26, 87-94, Clause 31, Clause 66(1)(d), Clauses 121-126, Clause 129, Clause 150(a), based on history, too short when considering those and other required changes collectively. There are other comments made within this document that refer to transitional arrangement timing that are not repeated here.

### **Section 4 Mining Codes of Practice**

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#### **Discussion Point**

*What are stakeholders' views on the development of the tri-state mining codes of practice listed above?*

Peabody Energy Australia supports the use of industry Codes of Practice, subject to them being identical across states and their usefulness as a Code of Practice and not an extended Regulation.

The recommendations from the Roben's Report into Work Health and Safety in the UK in 1970-1972 commented:

*The new Act should contain a clear statement of the basic principles of safety responsibility. It should be supported by regulations and by non-statutory codes of practice, with emphasis on the latter.*

*470. A determined effort should be made to revise, harmonise and up-date the existing large body of detailed statutory regulations, to simplify their style and to reduce their number. A simplified consultation procedure is recommended.*

*471. As a general rule, voluntary standards and codes of practice provide the most flexible and practical means of promoting progressively better (rather than minimum) conditions of safety and health at work. In future, they should be used more extensively in supplementation of—and wherever possible in place of—statutory regulations. This change in emphasis should be accompanied by arrangements for increasing the impact and effectiveness of such standards and codes. Voluntary standards and codes approved by the Authority should be taken into account in inspection work and should be admissible in evidence in enforcement proceedings.*

*472. Statutory regulations and approved voluntary codes and standards should be kept under constant review with the assistance of an Advisory Committee on Regulations and Codes. Expert technical working parties should be established ad hoc to undertake the detailed work.*

In relation to Health and Safety Management, there is a curious observation in relation to the relationship between the Regulation, Code of Practice and other relevant standards (Australian Standard). There appears to be no consistent structure or relationship between any of the relevant documents. This is indicative of a potentially larger problem in considering the inter-relationship of different requirements from different documents. It appears that each document is exclusive, rather than being appropriately related. This adds a level of complexity for a compliance approach in contrast to a cascading level of requirements that would assist in the establishment of an effective management process for a hazard.

*What are stakeholders' views on not adopting the **Survey and drafting for mine survey plans** code of practice in NSW, in light of the requirement for mining surveyors to have to comply with the **Survey and Drafting Directions for Mine Surveyors** issued by the Surveyor General?*

There should only be one guide, Code of Practice, Drafting Directions, Standard or whatever name it is given. The legislative process is to refer to Codes of Practice. The requirements of the Surveyor General should be included in the Code of Practice.

## **Section 5.1 Election process for mine S&H Representatives**

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### **Discussion Point**

*What are stakeholders' views on the most appropriate election process for mine safety and health representatives at coal mines?*

Peabody Energy Australia supports an election process arranged by the Mine Operator for employees at the mine. Worker representatives may assist with the election process in consultation with the Mine Operator or a suitably qualified organisation to conduct the election.

Peabody supports a transparent consultative arrangement for the conduction of an election of the safety and health representatives.

## Other Observations

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- A person conducting mining activities will be required to understand, implement, maintain and audit their systems and process in compliance with 207 pages of WHS (Mines) Regulations, and 371 pages of WHS Regulations. This is a total of 578 pages. This does not reflect a Government stated drive to simplify and streamline legislative impact on business, and certainly creates a level of complexity that may detract from increasing the safety and health of workers. The apparent final outcome of the objective of harmonization between the states is not seen to have been successful. The process that seems to have been followed is one of taking the model, adding one's own state regulations that were missing, and then adding the other states regulations that were missing. The end result is a complex and lengthy document with at times questionable value in improving health and safety. The distraction and burden to mine operators caused by the complexity may actually result in reduced practical health and safety outcomes.
- The regulations are peppered with specific and repetitively mentioned fines throughout. The practical application and enforcement of these will be difficult and onerous. If not eliminated, at least the repetitiveness of the specific fines may be removed by a blanket fine for "an offence". Tens of pages of unnecessary text may therefore be removed.
- Peabody generally supports the comments made by the Mine Manager's Association of Australia within the "Other matters causing concern or requiring qualification" section of their response to this draft.
- Clause 3:
  - The distance defining a Face zone is 200m whereas a hazardous zone uses 100m. Is there a logical reason and use for this distinction?
  - The definition for a hazardous zone includes any part of the mine where concentration of methane in the the GBA is greater than 0.25%. Is this an error given the current regulations use 1.25% and the value does not seem to correlate to any value in the Qld regulations? The consequences of this change if it is intended require further evaluation.
  - There is a definition for the mining engineering manager but not for their Electrical or Mechanical counterparts.
  - It has been suggested that the definition of "winding system" should be modified to ensure there is no legislative restriction if an emergency man winding system is installed in the event of a mine disaster.
  - The definition for **hot work** should have the word "surface" placed before temperature.
- Clause 6(3) refers to a **prospective mine holder** which does not seem to be defined anywhere. It is not clear why this clause is necessary and why it would need to be used.
- Clause 6(5) probably needs to be investigated to determine if confidential personal information of mine workers required to be kept by the WHS laws can and should be passed onto the Mine Holder if the mine operator ceases, particularly if the mine workers attached to that operator do not remain at that mine. The note at the base of that clause has the appearance of a regulation so it is unclear why the note is not formally part of the clause.
- Should the person referred to in Clause 9(1) be referred to as the operator instead of a PCBU at the mine?

- Clause 9(2) & (3) suggest that all risk assessments have a risk ranking (likelihood and severity). Many risk assessment tools don't use the risk ranking matrix. This requirement appears to support the WRAC risk assessment process without due consideration to other potentially more suitable risk assessment tools.
- The review of control measures requirement from Clause 10(c) is considered potentially onerous due to the definition of a notifiable incident in Clause 127 being at a consequence level down to medical treatment injuries.
- Clause 10(2) may expose mine operators to the risk of over use of the "request to review control measures" by a health and safety representative to disrupt operations for motives other than improving health and safety.
- Technical observations concerning Clause 14 are:
  - (1)(d) – Requires definition for the distinction between "temporary vacancy" and normal absences from the mine for reasons such as annual leave, attendances at training, short term sickness, etc. We interpret "vacancy" means when there is no person employed in that position, rather than where the assigned person is not physically present at the mine but others opinions may differ. Same issue exists in Clause 135(4). The penalties for that particular clause should be removed.
  - (3)(c) – Should "describe" be "reference" to avoid unnecessary bulk within the plan?
  - (3)(d) – Should "a record of the risk assessment" be "a record of the current risk assessment" to avoid unnecessary bulk and confusion within the plan
  - (3)(h) – A Standard on its own is not a control measure from a technical risk management point of view, it should perhaps read "Constructed to Comply with the Standard"
  - (3)(i) – There does not seem to be value in providing reasons why a control has been rejected, that just leads to unnecessary complexity
- Clause 16 – The notification requirements "before" any change to the mine SMS seems onerous, unnecessary and potentially obstructive to continuous improvement. If required at all, it may be more appropriately restricted to matters concerning PMHMP's, and or the "before implementing change" component removed. Again the extension of the notification to include an industry health and safety representative is not supported for reasons adequately listed elsewhere within this note.
- Technical observations concerning Clause 29 are:
  - (2)(a) – The open wording within this clause may lead to misinterpretation by some. Suggest reference to appropriate AS instead.
  - (2)(b) – Needs clarification that it only applies to underground parts of an underground mine
  - (2)(c) – The prescription in sub clauses (i) through (iii) are considered unnecessary and may lead to those only those risks being considered
  - (2)(d) – Is this requirement meant to be applied to just conveyor belts located underground? The text requires clarification on this.
- Clause 37 – The words "within sight of" should be removed as they are noble in intent but practically difficult, if not unnecessary. For example taking nature breaks, meal times, etc.
- Clause 49 – The title should be amended to "Winding Systems Ropes" to confine it to the intended risk. The manufacturer's certification should be acceptable for new ropes.
- Clause 50(1)(a) – Should this be confined to "normal operations" so as to avoid unnecessary disruption to maintenance and other abnormal circumstance as may be required to be undertaken from time to time?
- Clause 54 – the penalty sections should be removed from this clause. Technically every time a test reveals an exceedance the mine operator will be fined. The emissions testing should be at the tail pipe and not raw to provide for better innovation for treatment of the contaminants. The nitrogen dioxide component should be removed as this cannot practically be measured as an in service test.
- Clause 60(2)(e) – Should this be confined to new fans and not applied to existing installations? Should the "explosion" referred to exclude a coal dust explosion? If not those requirements may be impractical if not achievable.

- Clause 60(2)(h) – The punitive requirement to notify “each person” prior to stopping or starting a fan may delay what may be a critical corrective action.
- Clause 63 – Should this include a sub clause concerning control of emissions?
- Clause 69 appears to adopt the previous Queensland mine sealing regulations with a 2 year transition period. Those mine sealing regulations have recently been updated and those in the NSW draft are now superseded. This is not to suggest we necessarily agree with the previous Qld regulations or their recent amendments. The potential difference between states is not in accordance with the stated aim of harmonization. Our observations about the proposed regulations for NSW are as follows:
  - Clause 69(b)(ii) refers to “...or part of the mine”. This requirement may be interpreted by some to require that all parts of the mine are required to be sealed.
  - Clause 69(c) mentions “...each entrance from the surface to the underground mine”. Does this mean returns or exits from the mine such as upcast shafts?
  - Clause 69(d) requires an airlock. Is this, or can this, be the same airlock as required in Clause 69(e)(iii)? Note that Clause 72(2)(h) also refers to an airlock. The same question applies to that airlock. Acknowledging the 70kpa pressure pulse capability in the open state, the Qld regulator interprets that both doors of the airlock must comply with the seal’s closed capability. This seems illogical to us, compared than just applying that to the inner most door, and are concerned about any amendments within these regulations in that direction.
  - Clause 70 – Should be amended to apply to exposed alloys that create risks in the underground coal mine and reference Schedule 4 for clarity. Sub clause (2)(b) should include the risk from incentive spark. Sub clause (2)(c)(ii) should be amended to “be removed from underground parts of the mine”.
- Clause 72(2)(d)(ii) may require the addition of words “determined through a consideration if the risk” added after “by the quickest means available”.
- Clause 72(2)(e) should replace the reference to 30% with “prevent recirculation as an outcome”
- Clause 72(2) (h) requires an effective airlock at each return shaft or outlet. This requirement is significantly different to the current Regulation 119 which directs this towards to those shafts used for winding or the transport of people or materials. Is the device desired a seal rather than an airlock?
- Clause 71(2)(e) prescribes personal alarming devices that in, addition to the other controls listed, is a large departure from current regulation and potentially difficult to achieve at certain older mines.
- Clauses 73(4) & (6) require a continuous methane monitor on diesel engines in a hazardous zone and each face machine. “A Continuous Methane Monitor” may be taken to be a fixed monitor (not defined). Clarification is required on whether they must be fixed or if a portable detectors. This requirement appears to extend from what is in the current regulations which only applied for return airways. Was the intention and if so have the impacts been fully considered? Is sub Clause (6)(b) intended to cut the power to the cutter head – this needs to be clarified in the text?
- Clause 74(1)(b)(ix) may be ambiguous in its use of the words “*explosion-protected and meet the any or more requirements set out in clause 78(3)(a)-(d)*”. We interpret this to be solely electrically explosion protection, and not physical explosion protection, which may be practically impossible to fully achieve.
- Clause 81 should allow for plant (eg. Power trams) to be in the hazardous zone when not operating.
- Clause 83 does not cover all static energy risks and may be impractical in its application in requiring bonding the earth.
- Clause 85 the frequency of inspections should be as determined by the level of risk and not prescribed.
- Clause 104 should add the word “relevant” in front of “aspects”.
- Clause 134 creates ambiguity between **statutory positions** and **statutory functions**.
- Clauses 150 and 152 require review to ensure the intent is not that every person is licensed for diesel engine exhaust sampling etc., just the provider.

- Clause 175(1)(d) should include the words “if fitted” after canopies
- Clause 177 – This clause and all others prescribing reporting should be consolidated together. Sub Clause (f) mentioning 100kgs is considered too low a threshold for reporting.
- Clause 180 – Considered too open for the establishment of new fees.
- Schedule 1 – Mine Shafts and Winding systems – suggest to consolidate with MECP provisions and Clauses 48 through 50. Delete 3(e) as it is covered by design registration plus (i) is technically incorrect.
- Schedule 2 :
  - 2(1)(b) reliability of safeguards is unclear. Put a meaning of 'reliability' into the definitions clause.
  - (3)(e) should be 'inspection and/or testing...' as you may do one or both.
  - 3(h) list of plant is incomplete so should be qualified as not limited to. Question whether it is necessary as
    - the MECP covers all plant anyway so could be deleted.
  - 3(i) suggest wording be amended to qualify that only applies to where risks may cause harm to a person.
  - 3(l) suggest wording be amended so only applies to manually on board operated (this does not apply to
- Schedule 3 – Clause (24) - Change heading from 'flameproof' to 'not explosion protected' and throughout the clause. The clause should only apply to non-explosion protected engines in vehicles. Current legislation says this and excludes plant like power trams.
- Schedule 4 - Item 6 has the general problem in that there is no exclusions, even if there are alternative controls in place. 6(a) current wording prohibits the use of ignition sources where controls are implemented eg. ignition of oxy acetylene in a workshop outbye of the hazardous zone. Another issue is some ignition sources are unintentional eg. conveyor idler fails. The current wording prohibits these items being brought into the UG mine. 6(c) be deleted. Solvents are typically used in the maintenance of plant with appropriate controls in place. 6(d) same as (c) above 6(e) shaft conveyances at times may use oxy acetylene when appropriate controls are in place. Also transport of cutting and welding equipment down the shaft will be prohibited. 7. Uncoated and unprotected should apply to alloys as well as aluminium. Should be a permit system to allow unprotected alloys to be used in a hazardous zone when under the direct control of a person with consideration to the risks eg. video camera may have aluminium components and be used in hazardous zone. ie. used in the same way as the permit system for portable items. 9. FRAS needs to be defined here ie. refer to AS 4606 and MDG 3608. Also need clarification on what constitutes conveyor accessories. Suggestion is to use definition in AS4606.
- Schedule 7 - 5(5) need to be some transitional arrangements and guidance for mines to comply to this. Eg. What is meant by sealing?
- Schedule 10 - (5) The term 'control' needs clarification to manage the physical distance from the MME to the workers. This may protect the MME from enforcement actions where workers have not followed the MME systems. The MECP code can elaborate on this. (15) mechanical tradesperson are not a statutory position and therefore cannot carry out a statutory function (refer to page 118 cl 134(2)) . There should also be allowance for existing mechanical tradespersons who do not hold the required Certificate 3, as per existing legislation, to continue working at mines.

E. Jason Davis