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On behalf of CFMEU Mining and Energy Division Qld./

Submission on Mines Legislation (Resources Safety) Amendment Bill 2018

To Lucy Manderson
Committee Secretary
Education, Employment and Small Business
Parliament House
George Street
Brisbane 4000

I am making this submission as a Industry Safety and Health Representative (ISHR) appointed by the Construction Forestry Mining and Energy Union - Mining and Energy Division, Queensland (CFMEU)

I have been involved with the development and review of the Queensland Coal Mining Safety and Health legislation on behalf of the CFMEU since 1992 and have functions and powers under the CSMHAC 1999.

I am also appointed by the Minister to the Queensland Coal Mining Safety and Health Advisory Committee, and a member of the Queensland Board of Examiners and the Australian Mining Competency Advisory Committee.

The CFMEU would first like to raise its concern as to the development process and consultation of the contents of this Bill. We believe that the Department need to re-establish the process through which the Current Coal Mining Act 1999 was developed to a level which has had it acknowledged as some of the world's best mining safety and health legislation

The **Mines Legislation (Resources Safety) Amendment Bill 2017** was developed and presented to the 55th Queensland Parliament in 2017, in similar circumstances to the current (2018) Bill and submissions were called and the Infrastructure, Planning and Natural Resources Committee held hearings and subsequently tabled its report on 23rd October 2017 the 2017 elections then stopped further work on that Bill.

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That Committees report contained three recommendations, recommended that the Bill be passed, made recommendations on the change to experience of persons to the Advisory committees, and recommendation on the Competency held by the relative Chief Inspectors. While changes have been made to meet recommendation 2, it appears that even the Parliamentary Committee recommendation at No 3 has been ignored in the 2018 Bill.

Recommendations

Recommendation 1 5

The committee recommends the Mines Legislation (Resources Safety) Amendment Bill 2017 be passed.

Recommendation 2 11

The committee recommends that in his second reading speech the Minister outline the reasons for the proposed amendments to the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* which will provide the Minister discretionary power to appoint a person to the Coal Mining Safety and Health Advisory Committee or the Mining Safety and Health Advisory Committee, even if the person does not have the required 'coal mining operations' experience.

Recommendation 3 11

The committee recommends the Bill be amended to ensure that the Chief Inspector (under the *Coal Mining Safety and Health Act 1999*) and the Chief Inspector of Mines (under the *Mining and Quarrying Safety and Health Act 1999*) hold, at a minimum, a First Class Certificate of Competency in the corresponding type of mining for which they are the Chief Inspector.

On holding discussions with the Department people responsible for assisting with the drafting of the proposed changes to legislation contained within the 2017 Bill after the First reading and during the time which Public Hearings were held (part of what we believed would have been the consultation and cooperation process mentioned in the Coal Mining Safety and Health Act, which would occur prior to the Bill being Tabled), the CFMEU representatives were told that if the Bill was held up it may not be passed for some time and there would be opportunity to get changes suggested after the election.

While a number of minor changes have been from the 2017 Bill to the 2018 Bill some as a result of the brief and rushed consultation, between the tabling of the 2017 Bill and the Parliament being dissolved, a considerable number of issues which had been raised (which we were told could not be changed due to the short time frame to get the 2017 Bill passed) have still not been considered in the revised 2018 Bill.

Minister Lynhams First Reading speech refers to "tripartite consultation" being instrumental in finalising the proposals and yet there has been NO consultation since the parliament was dissolved and the New Government formed,

Tripartite consultation with unions and Industry has been instrumental in finalising the proposals and I thank all stakeholders for their contribution during the ongoing consultation processes. This tripartite consultation has been extensive and has continued over recent years for many of the initiatives in order to address stakeholder concerns and to refine the details. As well as consultation through the statutory advisory committees, consultation has also occurred more recently through tripartite reference groups.

The first reading speech goes on to state that we need to continue to improve Queensland mining safety and health standards, and yet here when we had a chance to address the matters not able to be included in the 2017 Bill due to poor consultation and lack of time, we have still not had the consultation to make such changes. The CSMHAC members and almost all of the Industry and union representatives were not aware the 2018 Bill was being prepared until its First reading in Parliament.

A good example of this is the recent **Land Explosives and Other Legislation Bill 2018** passed in February 2018 contained changes which affect the use of explosives on Coal Mines and the Coal Mining Safety and Health Advisory Committee through a tripartite sub-committee met with the Explosives Inspectorate and reached agreement on changes that need to be made to the Coal Mining legislation which would assist coal mines to to meet the changes. This was not even discussed with the writers of the 2018 Bill for inclusion.

To continue to improve Queensland's mining safety and health standards and outcomes for our mining workers, we must remedy any weaknesses in our mining safety and health laws. The Palaszczuk government is addressing key mining safety and health issues through the re-introduction of these priority reforms. The Palaszczuk government is committed to the safety and health of all workers across all industries. All workers have the right to expect that their safety and health will be protected whilst at work. We will continue to strengthen safety and health protections for workers so that workers do not fear that workplace risks or hazards will injure them, make them ill or worse.

Prior to the writing of the 2017 Bill, the Department had convened a tripartite committee to conduct a review on a number of matters relating to mine health and safety and this committee met on three occasions prior to this work being ceased by the Premiers office.

The 2017 Bill was then put to Parliament after being drafted by persons from only the Department itself. The objects of the Act at set out to be achieved by cooperation (defined at s32 CSMHA) and consultation. The CFMEU are disappointed that this process was not utilised on this occasion and a number of other matters that were tabled during the initial meetings were not raised in the 2017 Bill.

The current Queensland mining safety and health legislation has on numerous occasions been referred to as the leading OH&S mining legislation in the world. Since the Moura No 2 Disaster in August 1994 we have not had (but for the grace of god) another explosion in a Queensland underground coal mine. The Moura recommendations which were mostly implemented in the 1925 Act and regulations and those recommendations from previous disasters were carried forward when the 1999 Coal Mining Safety and Health Act and the Coal Mining Safety and Health Regulation 2001 were developed and implemented. This new legislation was developed through tripartite working groups and detailed risk management processes. Hence, I believe, together with the last disaster clearly in most peoples' minds, the effectiveness was visible for a short period in our fatality rate.

Since fatality figures have been recorded for Queensland Coal mines in 1882 we have had 340 fatalities. 137 of these were killed in the state's worst 6 Disasters. Since the introduction of the 2001 regulations we have still had 17 fatalities in coal while since 1974 we have had 99, which shows that the current legislation has either had some effect or some may say we have had luck on our side.

It is particularly concerning that there have been three attempts since 2009 to have the Queensland Coal Mining Safety and Health legislation reviewed, but until the current Bill very little progress.

This has been through numerous changes in Government and while the Newman government was in power a Regulatory Impact Statement was produced from within the Department with we are informed assistance from a major mining company but not workers representation. This RIS called for and received a number of submissions but has not been either rejected or taken further by the current Palaszczuk government.

The CFMEU believe that a number of the matters raised in the Bill should be changed prior to the Bill being passed, some because of omission or mistakes and some because the current wording is not in the best interest of safety and health.

The Workplace Health and Safety Legislation was reviewed through a National Harmonisation process at the same time the mining legislation across Australia was reviewed through the National Mine Safety Framework, but again no change in Queensland mining.

The latest review was started by the Department in January 2017 and stopped by the government after only 3 meetings. During that process, the parties were able to put forward issues which they saw as priority changes. While some of those have been addressed in the current Bill the majority of them have not been addressed.

Issues still not addressed include: -

- the powers of Industry Safety and Health Representative (ISHRs) to issue a s166 Directive to Reduce Risk, similar to PINs notice which can be issued by a WHS safety Representative under the WPH&S Act;
- the election process for election of Site Safety and Health Representatives(SSHR), similar to the WPH&S Act so that workers may elect their own safety representative rather than the current process which holds up election and gives this power to the SSE who if they were meeting their obligations would not have any issue with SSHRs;
- power of the SSHR to participate in incident investigations at their own mine;
- notification to the ISHRs of the requirements at s49 Notices by holder and s50 Notices by coal mine operator (the notice of a new mine and its boundaries as well as the name and contacts for the SSE);this has been a problem where the ISHR has powers and functions which cannot be met if they do not know a mine is established and also if the ISHR does not have the details of the SSE to notify them of inspections etc (this was documented in the 2009 review but never implemented);
- replacing the requirement for a person holding a Statutory Certificate of Competence as Open Cut/ Surface Mine Mining Manager; the only person currently required to hold any stated mining competence is the Open Cut Examiner at supervisor level.

The Queensland Coal Mining Safety and Health Committee has recently begun work on a process for its own review of the effectiveness of the Coal Mining legislation.

The following is our submission and recommendations on the Draft Bill

Clause 6

The CFMEU agree with the principle of an increase in the penalty for failure to discharge ones obligations under the legislation, the changes made to the 2017 bill meet our previous concerns.

Clause 8

The Bill suggests at (2) section 42(c) should be omitted and a new s42(c)

(c) to develop and implement a safety and health management system for all persons at the mine, including contractors and service providers;

The current Act was changed after the Jason Blee and Shane Davis Coronial Inquiries when mines had more than one Safety and Health Management Systems (SHMS) in use at the one mine. The word “single” was added to ensure that mines only have one SHMS in place for all workers to use. (Obligations of site senior executive for coal mine s 42 amd 2011 No. 2 s 7).

While the word single has been added to the definition at Clause 49 of the Bill it is still maintained at Clause 18 SHMS and as such should remain in clause 8 as deleting the word may give some indication to people that the deletion from clause 8 means there has been a change in the requirement.

The CFMEU believe that word “single” should be reinserted.

Current legislation

(c) to develop and implement a single safety and health management system for all persons at the mine;

to remove doubt the new section 42(c) should read

*(c) to develop and implement a **single** safety and health management system for all persons at the mine, including contractors and service providers;*

Clause 13

The new Division 3A Obligations of officers of corporations at (3) sets out steps for due diligence.

The CFMEU believe that the new the changes made to the 2017 Bill in the 2018 Bill at this clause meet our previous concerns.

Clause 15

Clause 8 makes an addition to section 42 (obligations of the SSE) and at the new 42(g) requires the SSE to develop a Management Structure. Which must state the matters required by s55. Clause 16 adds another requirement to those required by s55.

S36 of the CMSHA means that a person with obligations under the Act cannot pass those obligations to another person, but under the SHMS at a mine the SSE places roles and responsibilities on persons to undertake certain tasks.

36 Person not relieved of obligations

To remove doubt, it is declared that nothing in this Act that imposes a safety and health obligation on a person relieves another person of the person’s safety and health obligations under this Act.

The new clause 16 requires that the management structure must state the name of the person who is responsible for “*establishing and implementing a system for managing contractors and service providers*” but there may also be a different person who undertakes the role to meet the SSE obligation at (new) s42 (c) to (h) excluding (g).

Currently there are persons such as the Safety and Health Manager, Contract Manager, Training Manager who all are responsible for varying parts of the SHMS on behalf of the SSE.

The CFMEU recommends that instead of the new Clause 16

(ca) the name of the person who is responsible for managing the system of work for contractors and service providers at the coal mine; and

a section which states that where any person hold roles and responsibility for any of the obligations on the SSE at new s42(c), (d), (e), (f) or (h) then the names responsibilities and competencies should be included in the management structure.

As the CSMHAC are currently looking at developing a recognised standard for management structures, this should be the place to expand this and we would not need as much detail in the recognised standard. Management structures place roles and responsibilities on each person in that role to manage the hazards associated with process they been assigned to in the management structure. To ensure that the person can adequately and effectively control those hazards, they must have competencies and experience in tasks that they have been allocated to control in the management structure. **The Act should actually state clearly that the management structure must set out some of these technical competencies in addition to risk management communication and accident investigation (as currently required).** For example, for a person to be assigned as drill and blast manager/superintendent they would need to have some shot firing competencies, (shot firer, assistant shot firer) to show they have an understanding of the work to be supervised.

A number of mines only require the CSMHAC stated competency currently and they also nominate any supervisor as “supervisor” in the management structure rather that e.g Drill and Blast supervisor, electrical supervisor, mining supervisor.

below is the s42 with changes made from the Bill in red and new numbering

42 Obligations of site senior executive for coal mine

A site senior executive for a coal mine has the following obligations in relation to the safety and health of persons who may be affected by coal mining operations—

- (a) to ensure the risk to persons from coal mining operations is at an acceptable level;*
- (b) to ensure the risk to persons from any plant or substance provided by the site senior executive for the performance of work is at an acceptable level;*
- (c) to develop and implement a safety and health management system for all persons at the mine, including contractors and service providers;*

- (d) to give a contractor at the mine information in the site senior executive's possession about all relevant components of the mine's safety and health management system, required by the contractor to—*
- (i) identify risks arising in relation to any work to be undertaken by the contractor at the mine; and*
 - (ii) comply with section 43(1)(d);*
- (e) to give a service provider at the mine information in the site senior executive's possession about all relevant components of the mine's safety and health management system, required by the service provider to—*
- (i) identify risks arising in relation to any service to be provided by the service provider at the mine; and*
 - (ii) comply with section 47(1)(f);*
- (f) to review safety and health management plans of contractors and service providers within the meaning of section 43 or 47 and, if necessary, require changes to be made to those plans to enable them to be integrated with the mine's safety and health management system;*
- (g) to develop, implement and maintain a management structure for the mine that helps ensure the safety and health of persons at the mine;*
- (h) to ensure no work is undertaken by a coal mine worker at the mine until the worker—*
- (i) has been inducted in the mine's safety and health management system to the extent it relates to the work to be undertaken by the worker; and*
 - (ii) has received training about hazards and risks at the mine to the extent they relate to the work to be undertaken by the worker; and*
 - (iii) has received training so the worker is competent to perform the worker's duties;*
- (i) to provide for—*
- (i) adequate planning, organisation, leadership and control of coal mining operations; and*
 - (ii) the carrying out of critical work at the mine that requires particular technical competencies; and*
 - (iii) adequate supervision and control of coal mining*

operations on each shift at the mine; and
(iv) regular monitoring and assessment of the working environment, work procedures, equipment, and installations at the mine; and
(v) appropriate inspection of each workplace at the mine including, where necessary, pre-shift inspections.

(vi) adequate supervision and monitoring of contractors and service providers at the mine.

Clause 17 Ventilation Officer

The CFMEU believe that the new the changes made to the 2017 Bill in the 2018 Bill at this clause meet our previous concerns.

Clause 18 SHMS

The Chief Inspector of Mines had to send a letter to all SSEs to clarify that reports such as investigations, maintenance documents etc do form part of the SHMS therefore we recommend that this above section 62(2) is changed to clearly state this.

A new section to make it clear that **the Mine Record (as defined at s68 CMSHA 1999) and records of all maintenance of plant and equipment, accident investigations and causal analysis, form part of the mines safety and health management system.**

We need to re word this section to reflect that these documents form part of the SHMS.

Clause 22 Amendment to s80 (appointment of Members)

While making changes to Part 6 it would be sensible to insert a section for replacement of persons who leave /resign from the Committee. Currently one replacement would appear to require a list of another 6 names be put to the Minister.

The CFMEU believe that the new the changes made to the 2017 Bill in the 2018 Bill at this clause meet our previous concerns.

Clause 23 (Entry to Workplaces)

The CFMEU believe that the new the changes made to the 2017 Bill in the 2018 Bill at this clause meet our previous concerns.

Clause 24 new s138A Entry to Residential premises

The CFMEU believe that the new the changes made to the 2017 Bill in the 2018 Bill at this clause meet our previous concerns.

Clause 27 Board of Examiners (BOE) membership

Recently the Department has changed their position on the Chief Inspector of Mines (CIOM) and Quarries having to hold a First Class Certificate for Metalliferous Mines, this (the proposed s3A) may mean in the future that a person could be the CIOM and not hold a Certificate of Competency (CoC) Issued by the BOE and yet be appointed to the Board automatically.

Current CSMHAC s 186(4) which is to be deleted states

(4) At least 2, but no more than 3, members must be inspectors, of whom—

*(a) at least 1 must hold a first class certificate of competency for an underground coal mine; and
(b) at least 1 must hold a first class certificate of competency for an underground mine under the Mining and Quarrying Safety and Health Act 1999.*

The current s186(4) allows that in addition to the two Inspectors holding a First-Class cert (1 coal and 1Metalliferous) another Inspector may be on the BOE and may hold a different (CoC). The proposed new s186(4) would not allow this to occur. The Board already have additional 1st Class CoC holders who are required when a Inspectorate candidate sits an examination for a CoC to minimise conflict of Interest.

The deletion of the current s186(4) also takes away the maximum number of Inspectors on the Board of Examiners and may allow for the Department to control the Boards actions. Currently the Board is balanced,

As at Recommendation 3 of the **Planning and Natural Resources Committee report tabled on 23rd October 2017** the CFMEU recommend that the Chief Inspectors should hold at a minimum a First Class Certificate of Competency in the type of mining they are Chief Inspector for. The Mount Mulligan Disaster on 19th September 1921 subsequent report recommended separate Inspectorate for Coal and Metalliferous mines.

As such the CFMEU oppose the proposed clause 27 changes.

Clause 30**30 Insertion of new s 194A**

After section 194—

insert—

194A Board of examiners may consider previous suspension or cancellation of certificate of competency or site senior executive notice

(1) This section applies if—

- (a) a person has applied for the grant of a certificate of competency or site senior executive notice; and
- (b) a certificate of competency or site senior executive notice previously held by the person was suspended or cancelled under this Act.

(2) The board of examiners may have regard to the previous suspension or cancellation in deciding the application.

(3) Subsection (2) does not limit the matters to which the board of examiners may have regard in deciding the application.

This section does not consider if the person has a notice of Recognition under the Mutual Recognition Act. The CFMEU recommend it be amended to do so as a large number of people operating in Queensland mining industry now hold such recognition.

Clause 32 and Clause 33 Return of Certificates

This should also reflect the Notice of Registration for Mutual Recognition.

Clause 34 Part 10A notice by Chief Executive.

The Acts Interpretation Act gives the power to the a body who can make a decision to repeal or change that decision. Our understanding is that while it is not spelt out in the Coal Mining Safety and Health legislation as it was in the previous mining legislation, advice received is that it is already covered in another Act.

How does this affect or is it affected by this proposed Part 10A.

Acts Interpretation Act s24AA below

24AA Power to make instrument or decision includes power to amend or repeal

If an Act authorises or requires the making of an instrument or decision—

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

Clause 47 Insertion of new pt 20, div 7

310 Existing site senior executive notices

(1) This section applies to a notice issued by the board of examiners to a person relating to the person's competency to perform the duties of a site senior executive for a coal mine, if the notice was in force immediately before the commencement.

(2) The notice is taken to be a site senior executive notice.

S310 above - We also believe that the transition time should apply to SSEs and that they should meet the requirements of the new s26 of the CSMHAC and the BOE.

Clause 48 Amendment to schedule 2 (subject matter for Regulation)

From Minister Lynhams First reading speech for the 2018 Bill

Health surveillance of current and former mining workers will be added to the objectives of the acts and will reflect the importance of health surveillance as part of a mine's safety and health management system. This bill is a significant step forward in improving safety and health in Queensland's coal and metals mining industries through more effective legislation, by introducing measures to better safeguard our coal mine and metal mine workers.

Issue to cover the Health Scheme were previously covered by an Order which unfortunately was let lapse under the guidance of the Mine department and hence a number of those issues are now not covered by legislation.

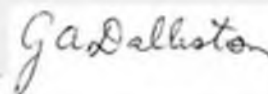
In light of the matters relating to CWP and COPD having arisen in the recent past the CFMEU strongly recommend that the roles responsibility and funding of the Health Surveillance Unit and or the Department of Mines and Energy in relation to the medical scheme and respiratory assessment should be included in this section of the regulation.

This should also allow for the required competencies to undertake a health assessment by Doctor, Treating Medical Practitioner and NMA.

Coal Industry Employees' Health Scheme

The *Coal Industry Employees' Health Scheme Order 1993* under the former Act, as in force immediately before the commencement, continues in force as a regulation under this Act and may be cited as a *Coal Mining (Industry Employees' Health Scheme) Regulation 1993*.

Yours in Safety



Greg Dalliston

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CFMEU M&E Qld