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On behalf of CFMEU Mining and Energy Division Qld./

Submission on Mines Legislation (Resources Safety) Amendment Bill 2017

To Dr Jacqueline Dewar
Committee Secretary
Infrastructure, Planning and Natural Resources Committee
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. 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.

This 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 this Bill.

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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 32 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 a 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 are 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 5

The CFMEU agree with the principle of an increase in the penalty for failure to discharge ones obligations under the legislation, but the new proposed at Clause 5 s34(d) (i)5000 points and (iii) 500 points decreases the penalty from the current s34(d) 7500 or 750 for individuals. **The CFMEU believes the higher penalty should remain in place.**

Current legislation

34(d) if the contravention involved exposure to a substance that is likely to cause death or grievous bodily harm—750 penalty units or 1 year’s imprisonment;

Clause 7

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)
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 12

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

In the current CMSHA at s41(1)(f) the Operator has an obligation to audit and review the effectiveness and implementation of the SHMS for the mine.

Obligation of Coal Mine Operator

s41(1)(f) to audit and review the effectiveness and implementation of the safety and health management system to ensure the risk to persons from coal mining operations is at an acceptable level;

The CFMEU believe that the new 47a(3) should include a requirement for the officers of the corporation to receive these Audit reports and ensure they are actioned.

Clause 15

Clause 7 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 15 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 15 requires that the management structure must state the name of the person who is responsible for “*managing the system of work for 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 15

(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 a 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 mine only require the CSMHAC stated competency currently and they also nominate any supervisor as “supervisor” in the management structure rather than 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 16 Ventilation Officer

The current practice at most underground mines is that a Ventilation Officer is appointed but a large number of the mines work rosters that involve longer days away from work than just the Saturday, Sunday. This has meant that they appoint a Ventilation qualified person for either each shift or as a minimum one on each of the two rotations of the roster.

The current wording only allows for 1 Ventilation officer to be appointed new s61(2)

(2) The underground mine manager for the mine must appoint a person as the ventilation officer for the mine.

Should this allow for “one or more”?

Proposed Section 61A (2) makes the Underground Mine Manager automatically the VO if the appointed VO is absent from the mine for less than 7 days.

(2) If the absence is for not more than 7 days, the duties and responsibilities of the ventilation officer are taken to be assumed by the underground mine manager during the absence.

Again the legislation should allow for the appointment of another VO qualified person not ONLY the UMM. Similar to s 60(4) for the appointment of a Manager for a commute operation the Underground Mine Manager should appoint an alternate Ventilation Officer.

60 Additional requirements for management of underground mines

(1) This section applies to an underground mine.

(4) The site senior executive must appoint an alternate underground mine manager if the mine is to be managed in accordance with a commute system.

Clause 17 SHMS

While this section has been proposed to be changed in the Bill section 62(2) still could be read to say that the “includes *organisational structure, planning activities, responsibilities, practices, procedures and resources for developing, implementing, maintaining and reviewing a safety and health policy*” are not part of the SHMS, but form part of some other system.

*(2) The safety and health management system must be a single, auditable documented system that **forms part of an overall management system that** includes *organisational structure, planning activities, responsibilities, practices, procedures and resources for developing, implementing, maintaining and reviewing a safety and health policy.**

This wording here could be changed to reflect that they are part of that SHMS for the purposes of the legislation.

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 therefor 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 CMSHA1999) and records of all maintenance of plant and equipment forms 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 21 Amendment to s80 (appointment of Members)

The Coal Mining Safety and Health Advisory Committee has since 1999 put panels of names who have

- (a) breadth of experience in the coal mining industry;
- (b) demonstrated commitment to promoting safety and health standards in the coal mining industry;
- (c) practical knowledge of the coal mining industry and of relevant legislation.

The new part to be added to s80(4)

*(3) Section 80(4), after 'operations'—
insert—*

*or the Minister otherwise considers the person
appropriate to be a member of the committee*

would allow persons with no or limited mining experience to be appointed to the panel whose main role is to provide advice to the minister and develop and review industry competencies, recognised Standards and other mining related matters.

If the appointment relates to the Department wishing to put a person who holds a health and safety executive position or other designated position then the legislation should refer to such position. The change would allow for a Director General or Deputy Director general who already are in a position to advise the Minister or it may also allow for lawyers etc to be on the Committee when it was put in place for mining experienced persons to make up such a committee.

The CFMEU opposes any change to this section, but having regard s to an Inspectorate appointment such as the current position held by Mark Stone, Executive Director Mine Safety and Health.

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.

Clause 23 (Entry to Workplaces)

In the change for entry to a workplace **the CFMEU recommend that the original S133(1)(e) " it is a workplace under the control of a person who has an obligation under this Act" be retained but omit the rest of that section** instead of the proposed new section below which is very open

(e) it is, or the officer reasonably suspects it is, a workplace.

Clause 24 new s138A Entry to Residential premises

Does this new section limit the powers of an Inspector to enter the camps on a mining lease / within the boundary of the mine which are under the control of an SSE and the Operator. Currently the Mining Camps are part of the mine and do not come under the Workplace health and safety Inspectors so any matters are dealt with by the Mines Inspectorate. If this change is accepted in the Bill will it limit their access.

138A Entry to residential premises

Despite anything else in this division, the powers of an officer under this division in relation to entering a place are not exercisable in relation to any part of a place that is used for residential purposes except

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 1 Metalliferous) 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 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 do 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

309 Ventilation officers holding office when transitional period ends

- (1) This section applies to a person who, when the transitional period ends, is appointed as the ventilation officer, or acting ventilation officer, for an underground mine.
- (2) The person's appointment ends immediately after the transitional period ends unless—
 - (a) the person holds a ventilation officer's certificate of competency; or
 - (b) the chief inspector extends the person's appointment for a further period of not more than 3 years.
- (3) The chief inspector may extend the person's appointment under subsection (2)(b) only if satisfied—
 - (a) the person has started to take the steps necessary to obtain the certificate of competency; and
 - (b) for an extension of more than 2 years—there are exceptional circumstances.
- (4) The chief inspector may impose conditions on the extension of the person's appointment.
- (5) If the person does not comply with a condition of the extension, the person's appointment ends.
- (6) This section applies despite section 61.

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.

We believe that 3 years is sufficient for any person already working as a Ventilation officer to be able to attain the Competency required for the Ventilation officer position and meet the requirements of the Board of Examiners to gain the Certificate of Competency.

For people who wish to gain the Certificate and have not yet started the timeframe would also be sufficient if they have current mining experience.

Hence the CFMEU strongly oppose the clauses in s309(2) (b) and 309(4)(5)(6).

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)

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.

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