



**Construction, Forestry,
Mining & Energy Union**

Mining and Energy Division
Queensland District Branch
ABN 73 089711 903

Brisbane

P.O. Box 508, Spring Hill Qld 4004
Level 2, 61 Bowen Street, Spring Hill 4000

P [REDACTED] F [REDACTED]

2 March 2020

Dr Jacqui Dewar
Committee Secretary
State Development, Natural Resources and Agricultural Industry Development Committee
Parliament House
George Street
Brisbane QLD 4000

Email: sdnraidc@parliament.qld.gov.au

Dear Committee Secretary and Members

Submission on the Mineral and Energy Resources and Other Legislation Amendment Bill 2020

The CFMMEU (Construction, Forestry, Maritime, Mining & Energy Union) Queensland District Branch of the Mining & Energy Division welcomes the opportunity to provide a written submission.

The Construction Forestry Maritime Mining & Energy Union, Mining & Energy Division Queensland District Branch is the principal union who represents the interests of those who work in the black coal mining industry including production, engineering and other workers. The union covers workers across a number of roles and activities in all these workplaces.

In the coal mining industry, we have over 112 years of representing coal mine workers at all levels and are well placed to both provide both historical present-day context and evidence to these subject matters.

We are the principal union who also represents the statutory people who hold competencies under the relevant Coal Mining Safety & Health Legislation who are referred to as Open Cut Examiners & Explosion Risk Zone Controllers (Deputies). The CFMMEU also have 3 Industry Safety & Health Representatives with powers and functions under the Coal Mining Safety & Health Act 1999. The Industry Safety and Health Representatives all hold a third-class certificate of competency as a minimum.

The CFMMEU have various other representatives who hold a number of competencies ranging from ventilation officer qualifications, risk management, accident investigation, to name a few.

The CFMMEU ISHR's have also been acknowledged as content experts to provide reports and evidence as by the Supreme Court of Queensland and provided evidence at various coroner's inquests, wardens inquiry and in the Pike River Royal commission.

Blackwater

45 Arthur Street
Blackwater Qld 4717

P [REDACTED]
F [REDACTED]

Dysart

Shop 24B Garden Plaza
Shannon Crescent
Dysart Qld 4745

P [REDACTED]
F [REDACTED]

Mackay

33 Milton Street
Mackay Qld 4740

P [REDACTED]
F [REDACTED]

Moranbah

Cnr Mills Avenue &
Bacon Street
Moranbah Qld 4744

P [REDACTED]
F [REDACTED]

Rockhampton

Level 5/156 Bolsover Street
Rockhampton Qld 4700

P [REDACTED]
F [REDACTED]

The CFMMEU wishes to place on the record we both welcome and support what we believe is well overdue, the implementation of Industrial Manslaughter and Critical Statutory roles employed by the mine operator. We also note the changes proposed to the Explosives Act 1999.

We have seen the loss of 8 miners' lives who simply went to work and never returned in the last 14 months. We have seen other serious accidents and workers continue to be diagnosed with occupational lung diseases and other illness. We must do something different and we must take the opportunity to do this now.

The submission will focus in on the "Principal policy objectives of the bill relate to three priorities of the Queensland government".

1. *Safety and health – to strengthen the safety culture in the resources sector by introducing industrial manslaughter offences in the Coal Mining Safety and Health Act 1999, the Mining and Quarrying Safety and Health Act 1999, the Explosives Act 1999 and the Petroleum and Gas (Production and Safety) Act 2004;*

The CFMMEU have been campaigning and fighting for the introduction of Industrial Manslaughter offences into the Coal Mining Safety and Health Act 1999. The union believes the introduction of this legislation is well overdue and is also required to bring us into line with all other industries in the state of Queensland.

We believe that the introduction of industrial manslaughter offences into the CMSHA 1999 will provide and enhance the protections all coal mine workers need. The level of scaremongering and fear that suddenly this legislation will result people going to jail and being fined, is well over the top and wrong.

The CFMMEU believe that along with its written submission (attached) we see the following points as a summary to the introduction of IM offences into the Act.

1. The CFMMEU M&E Division Queensland Branch supports the adoption, and inclusion of this legislation simply brings the mining legislation into line with other industries in Qld (Workplace Health & Safety Legislation) as an example.
2. The fear campaign being peddled is only being done by the employer and others to detract away from this well over due law.
3. The application of this actual "I.M" for negligence will apply for criminal negligence which is a high bar-will apply to reckless, wilful and deviant behaviour.
 - A worker dies in the course of undertaking work or is injured in the course of undertaking work and later dies
 - The conduct of the employer or senior officers causes the death of the worker
 - The conduct of the employer or senior officer is negligent in causing the death of the worker
4. Senior officer has a definition which needs to be considered further. The definition of who it applies to needs to be read in such a way it applies to all with obligations and also need to look at other off-site

obligations. The CFMMEU also welcomes the introduction of the Senior Officers definition into the CMSHA 1999 and to sit alongside the current obligation's holders for which this new proposed legislation applies.

5. The current CMSHA 1999 already contains the ability to prosecute and both fines/imprisonments. These also include other matters not just IM offences.
6. A person's conduct causes death if it substantially contributes to the death. The offence will be a crime and there will be no time limitation for bringing proceedings.
7. The defence in section 23 of the Criminal Code which relates to a defence of an act or omission being an 'accident' will not apply to an IM offence. Proceedings for an IM offence under the Resources Safety Act will be brought by the WHS Prosecutor or the DPP.
8. Provision is also made for a person to request the WHS Prosecutor to bring a prosecution for an act or omission which constitutes an offence of IM, where no prosecution has been brought and at least 6 months have elapsed from when the act or omission happened.

The introduction of this legislation will we believe act as a deterrent to the bad behaviours and poor culture of some employers and others within these organisations who continue to not comply with the law.

The defences are already in place for workers. Those undertaking their obligations and applying the required due diligence won't have anything to worry about. Those following the relevant CSMH Legalisation and applying the systems in place.

Appendix Number One attached

2. *Requiring that persons appointed to critical safety statutory roles for coal mining operations must be an employee of the coal mine operator; and enabling regulations to be made.*

The CFMMEU welcomes the proposal to have "Critical safety statutory roles for coal mining operations must be an employee of the coal mine operator". The CFMMEU supports the reasons and purpose behind this proposal in fact we believe its needs to be expanded. Within this part of the submission the union will outline the other accepts which need to be included.

The policy objective is to be achieved by amending the Coal Mining Safety and Health Act 1999 to clarify that only persons who are employees of a coal mine operator may be appointed to certain statutory office holder positions. This will ensure that statutory office holders can make safety complaints, raise safety issues or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment. The CFMMEU supports this statement.

These statutory roles are the most important roles within the coal mining industry. The obligations and responsibility for the health and safety of mine workers lies directly at the roles and responsibilities they carry out each and every shift. The list below applies to the current competency holders under the Act

Coal Mining Safety & Health Act 1999

Section 56 Supervisor – open cut mines

Workshop Activities

Washplant Activities

Other high-risk activities identified

Geotechnical Persons- UG & OC

The union believes that a number of critical safety roles need to include supervisors who need to be employed by the coal mine operator. These roles need to include the following roles in both open cut and underground coal mines. Also, consideration needs to be given to other work areas like preparation plants, workshop and exploration areas of a coal mining lease.

Open Cut Mines

The Open Cut examiner role needs to be reviewed and redefined. The role of an OCE cannot be one which includes any type of supervisory role other than for giving of direction to a coal mine worker of a health and safety requirement or request. The role of an OCE can only be for the purpose of OHS and not production purposes.

The CFMMEU believes the role of the OCE has been allowed to be reduced by the work practices and models adopted by the employers. This has come about in a number of ways including changing the title to OCE/Supervisor, Staff OCE, etc.

This has allowed for a different culture to be created and a focus on production not OHS matters. The companies have then created other roles for middle management and supervisors to be in control and manage the activities in the workplaces which in most cases would be covered by the OCE's core role.

The CFMMEU believe that as outlined in appendix number two the importance of ensuring that the OCE is both appointed and employed by the coal mine operator, there is no more critical OHS role in an open cut coal mine.

Appendix Number Two

Underground Coal Mines

The CFMMEU supports in the underground coal mines the critical safety statutory roles for coal mining operations must be an employee of the coal mine operator. This is welcomed, the union also believes the roles should be as a minimum:

ERZC (deputies) these people cannot be employed as a contractor or LH employee; their role must be for health and safety only, it cannot be for the purpose of production and focused on being a staff role.

The CFMMEU will provide verbally case studies and examples of why the mine operator needs to employ the ERZC controller and they not be contractors or LH employees.

Proposed Draft Regulation ERZC

- For every coal mine there shall be appointed by the underground mine manager in writing 1 or more competent persons (“deputies”) to make such inspections and carry out such other duties, as to the presence of gas, ventilation, state of roof and sides, and general safety (including the checking and recording of the number of persons under his or her charge) as are required by CMSHA 1999, CMSHR 2017 and the SHMS of the mine.
- A deputy so appointed shall not be a contractor, labour hire or other person engaged in getting minerals in the mine concerned.
- A deputy shall be required to devote the deputy’s whole time to such duties as are set out in Schedule 5 (“the deputy’s statutory duties & matters to be covered in inspections”), and nothing in this subsection shall prevent any deputy in any mine from being employed in the firing of shots, and in the erection of ventilation devices in his or her district and such other duties.
- However, any duties assigned to or undertaken by any deputy in addition to the deputy’s statutory duties shall not be such as to prevent him or her from carrying out the deputy’s statutory duties in a thorough manner. These duties must be of an OHS nature.
- If in the opinion of an inspector or ISHR the assignment to or undertaking by any deputy of additional duties is preventing such deputy from carrying out the deputy’s statutory duties in a thorough manner, such inspector shall, by entry in the mine record, order that the deputy shall be confined to the deputy’s statutory duties or that the extent of the additional duties (OHS) only shall be limited as the inspector specifies in such order.
- Such deputy shall obey an order so made by an inspector or IHSR and the manager shall enforce the observance of the same.
- The district of a mine assigned to a deputy shall not be of such a size as would prevent the deputy from carrying out in a thorough manner all the deputy’s statutory duties, which includes controlling the activities in his or her zone.
- A deputy shall not be dismissed for reporting in the mine record book or his or her statutory report any dangerous condition in a mine or the presence of flammable or noxious gas.
- Any holder, mine operator, or manager so doing shall be guilty of an offence against this Act.

The CFMMEU also believe that the following critical safety statutory roles at the coal mines need to be employed directly by the operator. They are listed below. Consideration also needs to be given to the role of Geotechnical Engineering due to the decision making and the role they undertake.

- Section 54(1) Site Senior Executive
- Section 60(2) Underground Mine Manager
- Section 60 (8) Underground Undermanager
- Section 60 (9) Explosion Risk Zone Controller
- Section 61(2) Underground Ventilation Officer
- Section 60(10) Underground Electrical Engineering Manager
- Section 60 (10) Underground Mechanical Engineering Manager

Supervisors Critical Safety Roles

While this submission is looking directly at the roles of statutory roles for coal mining operations the CFMMEU believes it needs to be expanded to a number of supervisory roles.

The Coal Mining Safety & Health Act 1999 currently allows for a management structure for safe operations at coal mines and the competencies of supervisors.

The CFMMEU believes a Schedule 5 C “Matters to be covered in inspections” needs to be developed and considered. The adoption of this will assist and improve in ensuring safe operations at coal mines.

The matters outlined below and contained within this submission the CFMMEU believes that certain supervisory roles of a critical safety roles for coal mining be created and those employed by the mine operator. This applies open cut mines.

Note:

Appendix Number 3

55 Management structure for safe operations at coal mines

(1) The site senior executive for a coal mine must—

- (a) develop and maintain a management structure for the coal mine in a way that allows development and implementation of the safety and health management system; and
- (b) document the management structure.

Maximum penalty—40 penalty units.

(2) The document must state—

- (a) the responsibilities of the site senior executive; and
- (b) the responsibilities and competencies required for senior positions in the structure; and
- (c) the names of the persons holding the senior positions and their competencies; and

(d) the competencies required, and the responsibilities, for each other supervisory position at the mine.

Maximum penalty—40 penalty units.

(3) For subsection (2)(b), an inspector may by notice given to the site senior executive declare a position to be a senior position.

(4) For each supervisory position mentioned in subsection (2)(d), the site senior executive must also keep a record of the names and competencies of each person authorised to carry out the responsibilities of the position.

56 Competencies of supervisors

A site senior executive must not assign the tasks of a supervisor to a person unless the person—

(a) is competent to perform the task assigned; and

(b) if there is a safety and health competency for supervisors recognised by the committee, has the relevant competency.

Maximum penalty—100 penalty units.

The current legislation while outlining a clear structure to be followed fails to address a number of matters. In particular the critical supervisor roles and responsibilities. In fact, some coal operators have argued against the development of a recognized standard for management structures. This is also required to be developed and implemented.

While focusing on the fatal accidents it has also been identified in serious accidents & HPI's the role supervision plays similar to the fatal reports.

The recent “Brady Heywood review of all fatal accidents in Queensland Mine & Quarries 2000 to 2019” was authored by Sean Brady for the Department of Natural Resources, Mines & Energy December 2019.

The report applied a certain methodology and what underpinned the process. Within this report was the subject of supervision and what role it played. There are 11 recommendations contained within this report for industry. Contained within the report it focused in on supervision and the role it played in fatal accidents for example.

The following extract relates to the review methodology applied, recommendation's for industry and role supervision played in the fatal accidents reviewed.

Review Methodology

The review adopted a multi-prong approach to investigate the underlying causes of fatalities, namely:

1. **Causes of Individual Fatalities:** Over the course of the review period, when a fatality occurred, the regulator investigated and compiled the findings into what are known as Nature and Cause Reports.³ These reports were analysed, both to understand the causes of each individual fatality, and to identify if patterns and common causes existed across the 47 fatalities that occurred between the 1st of January 2000 and the 31st of July 2019 – hereafter referred to as the review period.

2. **Incident Data:** To provide context to the individual fatalities, an analysis of the incidents that occurred throughout the mining industry was conducted. The details of these incidents were provided by the regulator, which receives reports on a range of incident types, many of which involve mandatory reporting. In the order of 40,000 incident details were available for the review period.

3. **Hours Worked Data:** In order to provide context to these 40,000 incidents, the hours worked for each mine, per month, from 2000 to 2019 were analysed.
4. **Discussion:** Discussions were held with individuals from both industry and the regulator. The findings from this review were presented to, and feedback was received from, the Coal Mining Safety and Health Advisory Committee⁴ and the Mining Safety and Health Advisory Committee⁵ - two mining advisory committees that advise the Minister for Natural Resources, Mine and Energy on the safety and health of coal mine, mineral mine and quarry workers.
5. **Call for Submissions:** On the 28th of October 2019 a call for submissions was released to the industry. Responses were considered as part of this review.
6. **Analysis and Reporting:** The analysis findings of the individual fatalities, the wider incidents in the industry, and the hours worked in the industry were collated to identify the overall industry trends that drive increases and decreases in fatality and incident rates. These findings, combined with research into various approaches to safety, form the basis for the recommendations for how industry and the regulator can attempt to reduce incident and fatality rates.

Recommendations 2 - The industry should recognise that the causes of fatalities are typically, a combination of banal, every day, straightforward factors, such as a failure of controls, a lack of training, and/or absent or inadequate supervision. Internal incident investigations in mining companies must strive to capture these combinations of causal factors, and avoid simplifying them to a single cause, such as human error, bad luck or freak accidents, which has the potential to mask the underlying system failures. Recommendations 3 to 5 cover the key causal factors identified in this review.

A superficial examination of the causes of the 47 fatalities analysed as part of this review gives the impression that many were freak accidents, that events transpired in such a way that could never have been anticipated. This impression can inspire fatalism: how can we possibly protect workers against such freak accidents? It can reinforce the notion that mining is a hazardous industry and fatalities simply cannot be avoided. However, the majority of fatalities were not freak accidents. Many were preventable, and there was rarely a single significant cause. This is likely to be an uncomfortable finding for many: there is a tendency to assume that bad outcomes must have equally bad causes – when a fatality occurs, it must have a particularly sinister cause. This is not the case – there were few smoking guns.

At a practical level, a large number of the fatalities involved a mine worker in a situation that they were inadequately trained for, with the controls meant to prevent harm being ineffective, unenforced or absent, with no or inadequate supervision to identify and remedy these shortfalls. It then took an initiating event, e.g., in the form of a freak incident or bad luck, to result in a fatality. Almost all of the fatalities were the result of systemic, organisational, supervision or training failures, either with or without the presence of human error. Human error alone would not have caused these fatalities. 17 involved no human error at all on the part of the deceased.

There were 10 incidents involving known faults, where individuals were aware of them, but no action was taken. 9 fatalities had known near misses occur prior to the fatality. In some cases, prior fatalities had occurred in a similar manner.

Recommendation 4: The industry needs to focus on ensuring workers are appropriately supervised for the tasks they are undertaking.

In 32 of the 47 fatalities, the worker was required to be supervised when undertaking the task,

i.e., the 32 did not include routine tasks, such as driving. **25 of these 32 fatalities involved inadequate or absent supervision. 17 of the fatalities involved a lack of training or inadequate training for the specific task being undertaken and inadequate or absent supervision.**

Not only does absent or inadequate supervision allow tasks to be approached in an unsafe manner, but it also greatly amplifies the consequences of a lack of training or ineffective or unenforced controls.

Physical, Individual, Supervision and Organisational factors for the fatality

The sections that follow summarise some of the key findings from the causal diagram analysis 33. They do not specifically focus on the technical details of each fatality, e.g., why did a tyre burst, why did a piece of machinery fall? While these details are, of course, important in terms of stopping reoccurrence of similar incidents, the purpose of this discussion was to highlight the macro trends evident across the 47 fatalities. Therefore, there is a focus on the role played by non-technical aspects, such as the wider human and organisational factors, including supervision, training, and human error.

It is the identification of these wider aspects that provides an opportunity to identify the systemic failures that are occurring in the Queensland mining industry.

Role of Human Error in Fatalities

A common view in the mining industry is that human error plays a substantial role in fatalities. This includes accidental error, as well as errors due to workers deliberately ignoring safety procedures and conducting activities in an unsafe manner. A common risk management term in the industry is *lapses in concentration*. Anecdotally, while a number of people in the mining industry have described the detailed investigations that occur in the aftermath of an incident, which includes the consideration of organisational factors, many have also expressed a view that industry investigations often stop at the point where human error is identified as playing a causative role in an incident.

Based on discussions with those in the industry there is no doubt that human error, both accidental and deliberate, occurs. However, human error alone did not cause the majority of the 47 fatalities examined in this review. Almost all were the result of systemic, organisational, **supervision**, and/or training causes - either with or without the presence of human error. Of the 47 fatalities, 17 involved no human error *at all* on the part of the deceased.

Role of Supervision in Fatalities

In 32 of the 47 fatalities, supervision was required for the tasks being undertaken, i.e. the 32 did not include routine tasks, such as driving.

25 of the 32 fatalities involved inadequate or absent supervision.

There were a variety of supervision issues, such as absent supervision, supervisors with inadequate knowledge of the hazards and level of risk, and supervisors who watched as workers undertook unsafe acts. An example of absent supervision occurred at Castle Creek Quarry in 2008, where supervision was

absent for much of the time when the work was being performed. An example of inadequate supervision occurred at Wongabel Quarry in 2006, when the supervisor observed a worker driving a loader with the bucket too high, but did not intervene. A fatality occurred when the loader struck another worker. Regarding supervision, the Queensland legislation is clear with respect to coal mines: 'A supervisor at a coal mine is a coal mine worker who is authorised by the site senior executive to give directions to other coal mine workers in accordance with the safety and health management system'³⁸. The legislation is also clear regarding a supervisor's competency. A site senior executive must not assign the tasks of a supervisor to a person unless the person 'is competent to perform the task assigned'³⁹. The site senior executive must ensure 'adequate supervision and control of coal mining operations on each shift at the mine'⁴⁰ and 'adequate supervision and monitoring of contractors and service providers at the mine'⁴¹. The Queensland legislation also includes similar provisions for Mineral Mines and Quarries⁴². The WA Fatality Review also highlighted major deficiencies in supervision. From analysis of the 52 fatalities which occurred during this time period, it was found that '44 per cent of fatal accidents occur under the supervision of a person in their first year in the role, with 6 per cent in the first month'⁴³. The WA Fatality Review further found that almost 'a quarter of fatalities involved a supervisor in their second and third year in the role' and overall '68 per cent of fatalities occurred during the supervisor's first three years in the role'⁴⁴. The WA Fatality Review recommended in its Areas for Improvement that the 'training of supervisors is regarded as a key issue in accident prevention'⁴⁵. The WA Fatality Review concluded that this data 'shows that new and inexperienced workers are at particular risk' and required 'close supervision' and adequate safety training⁴⁶.

Role of Training and Supervision in Fatalities

17 of the fatalities involved a lack of training for the specific task they were undertaking and inadequate or absent supervision. For example, a fatality occurred at Grasree Mine in 2014 where a worker, who was not assessed as competent, was sent to calibrate a gas detector. The worker was unsupervised and not familiar with the area of the mine. These factors led to the worker being unaware of the presence of an irrespirable atmosphere, which led to his death.

Summary

While the 1999 legislation has made significant progress in reducing the number of fatalities, it has been insufficient to reduce them to zero in the long term. The 47 fatalities that have occurred during the review period are equivalent to an average yearly fatality rate of 2.4 per year. Further, a fatality cycle is evident in the industry – there are periods when fatalities occur, followed by periods where there are few to none. If the industry continues to take a similar approach to safety, using the same philosophies and methodologies adopted over the past 19½ years, then similar safety outcomes are to be expected. Past behaviour suggests that in the order of 12 fatalities are likely to occur over any 5-year period.

For the 47 fatalities, a superficial examination of their causes gives the impression that many were freak accidents, that events transpired in such a way that could never have been anticipated. This impression can inspire fatalism: *how can workers be protected against such freak accidents?* It can reinforce the notion that mining is a hazardous industry and fatalities simply cannot be avoided.

The majority of fatalities, however, were not freak accidents. Many showed significant (and often unintended) interactions between factors across various levels in the mine site, e.g., individual, supervisory and organisational. Many were preventable, and there was rarely a single cause. They were typically the result of a combination of banal, every day, straightforward factors, such as a failure or absence of controls, a lack of training, and/or absent or inadequate supervision.

This is likely to be an uncomfortable finding for many: there is a tendency to assume that bad outcomes must have equally bad causes, especially when a fatality occurs. This was not the case – there were few smoking guns.

Protections for Statutory Persons & Coal Mine Workers Generally.

The CMSHA 1999 currently provided for protections and general reprisal provisions for all coal mine workers.

The CFMMEU wishes to touch on S 274 & S275 AA. Whilst these specific sections provide coal mine workers with protection to not undertake a task and then if they refuse there cannot be reprisal action against them in theory it seems fine in practical application it is the opposite.

In fact, it is rife in the area of LH employment in which coal mine workers are targeted and the CFMMEU are currently involved in several cases in which its members who are LH employees have been the victims of reprisal action.

We have also seen it occur with statutory officials employed in LH & contractual roles. The employer who is normally the mine operator will direct the employer of the LH or contractor they can no longer work on site and withdraws their access to site? They will then state it has nothing to do with what occurred but the role is no longer required or available. This has occurred most of the major operators within the coal industry.

The CFMMEU will provide verbally some of these particular examples. In exercising a right to withdraw or remove themselves from immediate danger sometimes the person they are dealing with are ill-equipped to deal with both the situation and take the required action. The situation has occurred in which these people are employed as LH or contractors knowing they will also be treated differently to the permanent employee for starters.

The CFMMEU believes that these sections of the Act need to be reviewed and further protections included to ensure that coal mine workers have real protections in the workplace.

The CFMMEU supports the suggested protections for all workers within the AWU submissions.

This is particularly the case for casual, labour hire and other temporary or contract employees whose insecure employment status and lack of guaranteed ongoing work leaves them at greater risk of reprisal. Coal mining workers are at serious risk of repercussion for raising safety issues, it is evident in the matters we deal on behalf of our members as explained above. Also, a very real fear exists amongst the coal

mining workers that raising health and safety issues will result in an adverse impact on their employment, creating an environment in which hazards and risks can potentially remain unrectified.

Given this, the CFMMEU submits that further protections should be implemented to ensure that coal mine workers who do raise safety issues do not face any adverse effects on their employment.

The CFMMEU believes that the prohibition of discriminatory, coercive or misleading conduct provisions contained within the Workplace Health and Safety Act should be replicated and included within the Coal Mining Safety and Health Act 1999 to foster a workplace health and safety culture by further empowering workers to raise safety issues with appropriate protections from any resulting adverse action.

These laws were enacted to ensure that Queensland workers could raise safety issues with the knowledge that doing so would place their employment at risk, and their application to the coal mining sector would further encourage an improved safety culture.

Such an amendment ensure consistency across all jurisdictions within Queensland.

The CFMMEU submission was provided for the Consultation draft Resources Safety and Health Queensland Bill 2019 - To the: State Development, Natural Resources and Agricultural Industry Development Committee On the: Resources Safety and Health Bill 2019. This was submitted on the 24th September 2019. This submission contains the CFMMEU position on the Utilising the WHS (Workplace Health Safety Prosecutor)

Appendix Number 4

The CFMMEU Mining and Energy Division Queensland Branch Submission. IM Discussion Paper Stakeholder Feedback- Resources Safety and Health Department of Natural Resources, Industrial Manslaughter. This was submitted on the 15th February 2019. This contains the CFMMEU position on protections of coal mine workers as well.

Appendix Number 5

270 Protection for officers

(1) A person must not disadvantage an officer for exercising the officer's powers under this Act.

Maximum penalty—500 penalty units.

(2) In this section—

officer means—

- (a) an inspector; or
- (b) an inspection officer; or
- (c) an authorised officer; or
- (d) an industry safety and health representative; or
- (e) a site safety and health representative.

273 Withdrawal of persons in case of danger

(1) If a coal mine is dangerous, all persons exposed to the danger must withdraw to a place of safety.

(2) If a coal mine worker is competent and able to eliminate the danger from a hazard, the worker must take the action necessary to eliminate the danger.

Maximum penalty—100 penalty units.

(3) If the coal mine worker is not competent or able to eliminate the danger, the worker must—

(a) take measures to prevent immediate danger to other coal mine workers that the worker is able reasonably to take; and

(b) immediately report the situation to the coal mine worker's supervisor.

Maximum penalty—100 penalty units.

(4) A competent person must be appointed to assess the danger from the hazard or hazards that have resulted in the withdrawal of persons to a place of safety.

(5) Subject to subsection (6), a person must not be readmitted into the coal mine or part of the coal mine that is dangerous until the persons mentioned in subsection (6) have declared that risk is at an acceptable level.

(6) The minimum number of competent persons necessary to reduce the risk to an acceptable level may be readmitted to the coal mine or part of the coal mine if appropriate precautions are taken so that the risk to those persons is within acceptable limits.

(7) For this section, a coal mine is taken to be dangerous if—

(a) sealing operations are to commence; or

(b) the coal mine or part of the coal mine has been sealed;

or

(c) the controls detailed in a principal hazard management plan have not been implemented or maintained.

(8) However, for this section, a coal mine is not considered dangerous if—

(a) sealing operations are being undertaken in an emergency and an inspector have been notified; or

(b) sealing operations are being undertaken following written acknowledgement from an inspector that sealing operations comply with recognised standards and good mining practice; or

(c) written consent has been received from an inspector for persons to be underground following a sealing.

(9) As soon as practicable after being appointed, the person appointed under subsection (4) must enter in the mine record a report on the withdrawal of persons and remedial action taken to eliminate the danger.

Maximum penalty—100 penalty units.

(10) The site senior executive must notify the inspector of any action taken under this section immediately after the action is taken.

Maximum penalty—200 penalty units.

274 Where coal mine worker exposed to immediate personal danger

(1) Subject to section 273(2) and (3), if a coal mine worker (the *original worker*) believes that there is immediate personal danger, the worker has the right—

(a) to remove himself or herself to a position of safety; and

(b) to refuse to undertake a task allocated to the worker that may place the worker in immediate personal danger.

(2) The coal mine operator for the coal mine or the coal mine operator's representative must not disadvantage the coal mine worker for exercising the worker's rights under subsection (1).

Maximum penalty—200 penalty units.

(3) Subsection (4) applies if the coal mine operator or the operator's representative subsequently asks or directs another coal mine worker (the *subsequent worker*) to place himself or herself in the position from which the original worker has removed himself or herself, or to undertake a task that the original worker has refused to undertake.

(4) The operator or the operator's representative must advise the subsequent worker that the original worker exercised rights under subsection (1) because the original worker believed that there was a serious danger to the original worker's safety or health.

Maximum penalty for subsection (4)—200 penalty units.

275 Representations about safety and health matters

(1) This section applies to a person who is—

(a) a coal mine worker; or

(b) another person with obligations under this Act; or

(c) an employee of a person mentioned in paragraph (b).

(2) The person may make, either personally or by a

representative, a representation to an inspector or inspection officer about—

- (a) an alleged contravention of this Act; or
 - (b) a thing or practice at the coal mine that is, or is likely to be, dangerous.
- (3) The inspector or inspection officer must investigate the matter.
- (4) A public service employee must not disclose the name of the person making the representation—
- (a) except for a prosecution under subsection (5); or
 - (b) unless the person consents to the disclosure.
- (5) The person must not make a false or frivolous representation.
- Maximum penalty for subsection (5)—40 penalty units.

275AA Protection from reprisal

(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, the other person—

- (a) has made a complaint, or in any other way has raised, a coal mine safety issue; or
- (b) has contacted or given help to an official in relation to a coal mine safety issue.

Maximum penalty—40 penalty units.

(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.

(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.

(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.

(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

(6) This section does not limit or otherwise affect the operation of the *Public Interest Disclosure Act 2010*, chapter 4, part 1 in relation to reprisals.

(7) In this section—

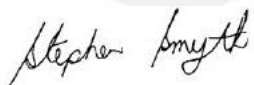
coal mine safety issue means an issue about the safety or health of a person or persons while at a coal mine or as a result of coal mining operations.

3. *Under the Explosives Act 1999, about conditions and other requirements that apply to a security clearance for a person with access to explosives.*

The CFMEU M&E division Qld Branch have concentrated on the first 2 matters within the submission. This matter has not been addressed in this submission.

The CFMMEU and its representatives will be available to speak to this submission and its attachments at the upcoming hearing.

Yours Faithfully



Signed on behalf of the CFMMEU Mining & Energy Division
Queensland Branch
Stephen Smyth
CFMEU M&E District President



**Construction, Forestry,
Mining & Energy Union**
Mining and Energy Division
Queensland District Branch
ABN 73 089 711 903

Brisbane

P.O. Box 508, Spring Hill Qld 4004
Level 2, 61 Bowen Street, Spring Hill 4000

P [REDACTED] F [REDACTED]

Appendix Number One

2nd March 2020

CFMMEU Submissions

Dr Jacqui Dewar
Committee Secretary
State Development, Natural Resources and Agricultural Industry Development Committee
Parliament House
George Street
Brisbane QLD 4000

Industrial Manslaughter Submission

The following is the written submission to the Safety and health – to strengthen the safety culture in the resources sector by introducing industrial manslaughter offences in the Coal Mining Safety and Health Act 1999, the Mining and Quarrying Safety and Health Act 1999, the Explosives Act 1999 and the Petroleum and Gas (Production and Safety) Act 2004;

Both the offence categories, and the offence penalties, within the *Coal Mining Safety and Health Act* 1999 (CMSHA) are insufficient to deter, or address, grossly negligent conduct causing one or more fatalities.

Offence Categories

While the CMSHA places requirements on obligation holders to comply with the Act and Regulations (s. 37), ‘take reasonable precautions’ and ‘exercise proper diligence’ (s.38, (3)), and to refrain from doing ‘anything willfully or recklessly that might adversely affect the safety and

Blackwater
45 Arthur Street
Blackwater Qld 4717

P [REDACTED]
F [REDACTED]

Dysart
Shop 24B Garden Plaza
Shannon Crescent
Dysart Qld 4745

P [REDACTED]
F [REDACTED]

Mackay
33 Milton Street
Mackay Qld 4740

P [REDACTED]
F [REDACTED]

Moranbah
Cnr Mills Avenue &
Bacon Street
Moranbah Qld 4744

P [REDACTED]
F [REDACTED]

Rockhampton
Level 5/156 Bolsover Street
Rockhampton Qld 4700

P [REDACTED]
F [REDACTED]

health of someone', there is no clear linkage between gross failure to comply with these requirements, and penalty provisions. There is, for example, no explicit recognition within the Act that the extent to which negligence on the part of coal mine operators, site senior executives or other obligation holders contributed to deaths and injuries should be a core factor to be considered when penalties are applied.

This lack of clarity is extremely unhelpful. If obligation holders cannot plainly see that negligent behavior on their part will give rise to significantly higher penalties, then the legislative provisions are less likely to serve as a deterrent. If the linkages between negligence and penalties are not well defined, then it will be more difficult to successfully prosecute obligation holders, and to provide some measure of redress for coal mineworkers and their families when incidents occur.

By contrast, new provisions in the *Work Health and Safety Act 2011* (WHS Act) explicitly describe the circumstances under which negligence on the part of corporations, executive officers, and senior officers, constitutes the indictable offence of industrial manslaughter. The core elements of this offence are clear. Companies, and their senior executives, operating outside of the mining industry now know that when they act, or fail to act, negligently; and this conduct substantially contributes to the death of a worker; they are liable to prosecution for industrial manslaughter. The greater clarity provided by the introduction of this specific offence should also assist the likelihood of successful prosecution of the worst types of breaches.

Nineteen workers have died at Queensland coal mines since 2001. Notwithstanding all of the efforts to improve mine safety performance over the years, the Queensland coal industry remains a high-risk workplace. The CMSHA should be amended to provide Queensland coal mineworkers and their families with the same level of confidence now enjoyed by workers in other industries that, when negligence on the part of companies, or their senior executives, results in the death of a worker there will be an unambiguous and substantial response.

Penalties

In addition to there being no clear linkage between negligence and penalty levels, the maximum penalties for contraventions of obligations causing death are manifestly inadequate to deal with circumstances involving grossly negligent conduct on the part of an obligation holder.

This inadequacy applies to both the level of penalty that can be imposed on a coal mine operator, or other company; and the penalty that can be imposed on individuals.

The stark discrepancy between the \$1.9 million fine that could be applied to a coal mine operator whose gross negligence resulted in the death of a worker; and the \$10 million maximum penalty that could be awarded under similar circumstances under the WHSA, cannot be sustained.

Similarly, the CMSHA maximum penalties of two, or three years imprisonment (where one, or multiple deaths occur); need to be more closely aligned with the new 20-year term of imprisonment in the WHSA.

It should be noted that the CFMEU is not advocating extensive imprisonment terms in all circumstances where a worker is killed. Rather, as with the new provisions of the WHSA, we believe that a higher maximum term of imprisonment needs to be available for potential use where criminal negligence on the part of an individual can be made out.

Failure to adjust CMSHA penalties in the context of both the need to recognize the significance of negligent behavior, and the new WHSA penalties, would send an unfortunate signal to coal miners that their lives are worth less than those of workers in other industries.

We welcome the proposed penalties for both fines and imprisonment as drafted.

Inclusion of an Industrial Manslaughter Offence

The CFMMEU strongly believes that an industrial manslaughter offence should be included in the CMSHA. It should also apply to all obligation holders and be extended to others who provide direction to mine workers.

Indeed, we believe that it is impossible to reasonably justify any other course of action given the lack of a comparable offence dealing with negligence in the CMHSA; ongoing coal industry safety failures; and the illogicality of legislating to deter and respond to negligence in the non-mining sector, whilst avoiding the same action in a work environment every bit as challenging, if not more so, than the industries already covered by the WHSA amendments.

The arguments made by the independent *Best Practice Review of Workplace Health and Safety in Queensland* in favor of insertion of an industrial manslaughter offence into the WHSA apply equally well to the mining industry, and the CMSHA.

We note that the Queensland Resources Council (QRC) has previously argued that inclusion of an industrial manslaughter offence would somehow 'create a finger-pointing culture that ends the sharing of safety information'.¹ The QRC appears to be suggesting that there would be such a surge in prosecutions for industrial manslaughter that a climate of fear would be created. In reality, given that industrial manslaughter is an indictable offence, prosecutions will only take place as and when the Director of Public Prosecutions believes that all the elements of the offence can be sustained. There will be no 'open season' on companies and their executives unless those obligation holders have negligently caused mineworker deaths. As far as sharing of safety information is concerned, CMSHA

¹ Ian Macfarlane, *Rushed workplace laws risk undermining safety*, 11 October 2017.

obligation holders who fail to share health and safety information `that other persons need to know to fulfil their obligations or duties under this Act' are committing an offence. We would hope and expect, that the QRC will be reinforcing this reality with their members.

Application of an Industrial Manslaughter Offence

Under the WHSA, both corporations (or `persons conducting a business or undertaking' (PCBUs)) and their senior officers can be charged with industrial manslaughter. This approach reflects the Queensland Government's adoption of the reasoning contained within the *Best Practice Review* that the offence of industrial manslaughter should target those with the greatest capacity to influence the safety culture within an organization.


The CMSHA places safety and health obligations on a range of specific persons in Section 33 (2). It is the CFMEU view that an industrial manslaughter offence would sensibly apply to all of those nominated persons. Negligence on the part of a contractor s. 33 (2) (d), or an `erector or installer of plant' s. 33 (2) (f); or a manufacturer of plant s.33 (2) (e); should be treated no less seriously than negligence on the part of coal mine operator s.33 (2) (b). All of these parties would fall within the category of PCBU under the WHSA.

1. *Alternatively, is there merit in strengthening the existing offence framework under the Resources Safety Acts without introducing separate industrial manslaughter offences, for example by introducing a circumstance of aggravation attracting a higher penalty where recklessness is proven as an element of the offence?*

As indicated, the CFMMEU can see no reasonable justification for incorporating an industrial manslaughter protection within the WHSA, and not including the same provision within the CMSHA.

There is a real danger that any attempt to construct some alternate provision for inclusion in the mining acts will simply result in less deterrence, and less redress against negligence, in the mining sector than will apply in non-mining industries.

Yours Faithfully



Signed on behalf of the CFMMEU Mining & Energy
Division Queensland Branch
Stephen Smyth
CFMEU District President



2nd March 2020

Appendix Number Two

CFMMEU Submissions

Dr Jacqui Dewar
Committee Secretary
State Development, Natural Resources and Agricultural Industry Development Committee
Parliament House
George Street
Brisbane QLD 4000

Email: sdnraidc@parliament.qld.gov.au

Dear Committee Secretary and Members

Submission on the Mineral and Energy Resources and Other Legislation Amendment Bill 2020

The CFMMEU (Construction, Forestry, Maritime, Mining & Energy Union) Queensland District Branch of the Mining & Energy Division welcomes the opportunity to provide a written submission.

The CFMMEU believes this a most important change and will lead to improved health and safety outcomes at coal mines. This is well overdue and we have seen since the introduction of the Coal Mining Safety and Health Act 1999 & Coal Mining Safety and Health Regulation 2001 changes occur in the mining industry and in some cases have led to reduced protections and safety outcomes for mine workers.

The industry welcomed the current legislation and with its risk based, self-enabling and limited prescriptive legislation. But as with anything it requires reviewing and improving. We have seen a move away from the core role of health and safety by statutory roles and in particular OCE's position at mines.

The industry in particular have created a culture and behaviour within their business of playing down the importance of this role. They will focus on getting type of people into the roles by offering those from within the non-employee's roles the training and opportunities to undertake OCE training and opportunities. The end result is there are a number of OCE's in roles whilst having the competencies really are not undertaking the role and appear to be more focused on production outcomes.

The CFMMEU believes there are a number of factors and reasons for this and while not being a total list are some of the main factors:

- We have seen the work practices and work models adopted by industry as a whole
- Mining companies and contractors' statutory roles focused on production not the core role of OHS, have seen bonus linked to performance of production with a mix of safety.
- In recent years the adoption of the LH model with OCE's and Supervisors thrown into key roles of OHS.
- The focus by an OCE on the money reward and driven by the business outcomes as a result not the OHS reasons.

- OCE's role being seen by coal mine workers as one of a supervisors not the role of OHS and responsible for coal mine workers health and safety.
- The employers can simply remove or take away the employment opportunities for an OCE employed as a contractor or in particular LH. We have seen this occur. Industry will argue it doesn't but it is rife.

The CFMMEU will verbally address the scaremongering and provide further evidence and information at the hearing. We will address this in our verbal submissions.

The CFMMEU supports and applauds the initiative to have critical safety statutory roles for coal mining operations appointed and employed by the coal mine operator.

Requiring that persons appointed to critical safety statutory roles for coal mining operations must be an employee of the coal mine operator; and enabling regulations to be made.

The union believes that there needs to be an adoption of a similar Schedule 5 (below) be developed and adopted for Open Cut Coal Mines titled Schedule 5 B.

The union has developed a draft schedule 5 B which is contained within this document below. This is currently the Coal Mining Safety and Health Regulation 2018 requirements for "Matters to be covered in Inspections" this applies to underground coal mines for inspections.

(extract below)

Schedule 5 Matters to be covered in Inspections

section 309(3)(b)(i)

- 1 the presence of flammable gases or contaminants in the atmosphere
- 2 the adequacy of the following—
 - (a) ventilation;
 - (b) coal dust inertisation;
 - (c) emergency, first aid and firefighting equipment
- 3 the condition of the following—
 - (a) ventilation control devices;
 - (b) auxiliary fans;
 - (c) surfaces over which persons may travel or vehicles may be driven;
 - (d) the support for the roof and sides of the workings
- 4 the stability of roadways in the workings
- 5 indications of heating or fire
- 6 abnormal water inflow
- 7 plant malfunctions
- 8 the proper functioning of communication and monitoring systems
- 9 excessive accumulation of mud, water or coal
- 10 thermal environmental conditions

Schedule 5 B Matters to be covered in Inspections (Draft)

(Sections - 103, 104, 105, 106, 107, 108 & 109 CMSHR 2017)

1. Presence of flammable gases or contaminants in the work area.

2. Stability of Roadway's, all active mining areas including High walls, low walls including benches and input areas. All places in which people work or travel. Bunding including height, width.

3. Surfaces over which persons may travel or plant / equipment may travel. Roadway conditions including width if narrow and where controls are in place for example speed restrictions.

4. Adequacy of the following:

- Respirable dust including coal and Silica
- Emergency, first aid, firefighting, emergency response capabilities.
- Strata Highwall, Low Wall and Bench's including in pits, Highwalls, Low walls, & End walls with any hazards – Geo- Tech Advice, cracking, slumping, low bunding, etc
- Dump areas standards- lighting, bunding, interaction, controls for dump access and emergency access requirements in these work areas.

5. Indications of heating's & fires

6. Abnormal water, mud or other fluid inflow material

7. Plant & equipment malfunction & machinery interaction

8. Proper functioning of communication, monitoring and other services

9. Excessive accumulation of Mud, water or coal

10. Thermal environmental conditions

11. Activities of workers in and around the open workings in which work is taking place.

Including nightshift inspections and lighting standards. This should include supervisor inspections of work groups e.g. contractors in wash plants, workshops, tyre fitting bays, JSA's.

12. Loading of Explosives or areas explosives are to be fired. This to include the security of magazine and vehicles e.g. signage, locks, fencing, etc

14. Delineation & signage on all roads and circuits in and around the mine and its workings, dirty or missing or inadequate- required immediate rectifying.

16. Open Cut Examiners must be contacted and made aware of any HPI's or other incidents which occurred on the previous shift.

17. Hazards across the site including wet or adverse weather conditions, speed restrictions and all other hazards which pose an unacceptable level of risk to coal mine workers.

Proposed Draft Regulation- Coal Mining Safety & Health Regulations 2020

In every open cut coal mine there shall be appointed by the Site Senior Executive in writing 1 or more competent persons ("open cut examiners") to make such inspections and carry out such other duties as required by Schedule 5 B Coal Mining Safety & Health Regulations 2018 but must include as to the state of the sides and the general safety of the open cut excavation (including the recording of the number of coal mine workers under the charge of such an examiner) as are required by this Act and the Safety Health Management Systems of the mine in which the OCE works.

1. An open cut examiner so appointed shall not be a contractor, Labour Hire or other person engaged in getting minerals (production) in the mine concerned. They must be employed by the coal mine operator.

2. An open cut examiner shall devote his or her whole working time at the mine to such duties as are set out in Schedule 5 B & the mines SHMS (“the examiner’s statutory duties”).
3. Nothing shall prevent any open cut examiner in any mine from being employed in the firing of shots and in such other OHS Roles and Responsibilities.
4. However, any duties assigned to or undertaken by any open cut examiner shall not be such as to prevent the examiner from carrying out the examiner’s statutory duties in a thorough manner. His or her duties cannot be of a production nature.
5. If in the opinion of an inspector or ISHR the assignment to or undertaking of additional duties is preventing an open cut examiner from carrying out the examiner’s statutory duties in a thorough manner such inspector shall, by entry place on the mine record, a directive that the open cut examiner shall be confined to the examiner’s statutory duties or that the extent of the additional duties shall be limited as the inspector specifies in such order only of OHS nature.
6. Every open cut examiner employed in a mine in relation to which an inspector has made such a directive shall obey that order and the Site Senior Executive of that mine shall enforce the observance of that directive.
7. An open cut examiner shall not be dismissed for reporting in his or her report any dangerous or hazardous condition in a mine as required by Schedule 5 B.
8. Any holder, operator or Site Senior Executive so doing shall be guilty of an offence against this Act.

2nd March 2020

Appendix Number Three

CFMMEU Submissions

Dr Jacqui Dewar
Committee Secretary
State Development, Natural Resources and Agricultural Industry Development Committee
Parliament House
George Street
Brisbane QLD 4000

Schedule 5 C Matters to be covered by safety inspections of a workplace not covered by a OCE or ERZC

1. Surfaces over which persons may travel or mobile plant may be driven.
2. Plant & equipment malfunction & machinery interaction.
3. Proper functioning of communication, monitoring and other services
4. Environmental conditions persons are exposed to, e.g. Thermal, wet weather.
5. Activities of workers in and around the work area where the activity is taking place. Including nightshift inspections.
6. Ensure the SHMS and in particular the risk management practices and requirements are being applied and followed.
7. Adequate lighting.
5. Adequacy of the following:
 - Respirable dust including coal and Silica
 - Emergency, first aid, firefighting, emergency response capabilities
6. Indications of heating's & fires
7. Abnormal water, mud or other fluid inflow material
8. Excessive accumulation of Mud, water or coal.
9. Delineation and signage on roads and in the workplace.



1-3-2020

Appendix 4

**Construction, Forestry,
Mining & Energy Union**
Mining and Energy Division
Queensland District Branch
ABN 73 089 711 903

Brisbane

P.O. Box 508, Spring Hill Qld 4004
Level 2, 61 Bowen Street, Spring Hill 4000



September 23, 2019

Information Paper**Consultation draft Resources Safety and Health Queensland Bill 2019**

**To the: State Development, Natural Resources and Agricultural Industry
Development Committee**

On the: Resources Safety and Health Bill 2019

The Construction Forestry Maritime Mining & Energy Union, Mining & Energy Division Queensland Branch is the principal union who represents the interests of those who work in the black coal mining industry including production, engineering and other workers.

We are the principal union who also represents the statutory people who hold competencies under the relevant Coal Mining Safety & Health Legislation who are referred to as Open Cut Examiners & Explosion Risk Zone Controllers (Deputies). The CFMMEU also have 3 Industry Safety & Health Representatives with powers and functions under the Coal Mining Safety & Health Act 1999 they hold 3rd class certificates of competency as a minimum.

The CFMMEU M&E Division Queensland provides the following submission and response to the draft Safety and Health Queensland Bill 2019.

The CFMMEU has previously provided a response to the PMO report in relation to the consultation draft titled "Establishing the Regulatory Framework for Resource Safety & Health in Queensland".

The CFMMEU submission to this previous consultation paper on the 5th October 2018 covered off and outlined its preferred position for a number of matters contained in this draft.

Included in this submission was a "Regulator Model" which included a new title for the minister, new roles and responsibilities for various statutory roles. For the sake of repeating the CFMMEU position I will be attaching both the submission and the regulator model flow chart.

We support a "Coal Board Statutory Body" with representation made up of the main stakeholders - the CFMMEU M&E Division, QRC, Government & Independent Chair (Attached Regulator Model)
In summary the CFMMEU provides the following:

Part 1 – Preliminary**Blackwater**

45 Arthur Street
Blackwater Qld 4717

**Dysart**

PO Box 132
Dysart Qld 4745

**Mackay**

33 Milton Street
Mackay Qld 4740

**Moranbah**

Cnr Mills Avenue &
Bacon Street
Moranbah Qld 4744

**Rockhampton**

Level 5/156 Bolsover Street
Rockhampton Qld 4700



Part 1 outlines the preliminary provisions. Section 1 states that the Act is to be named the Resources Safety and Queensland Act 1999 (RSHQ Act). Section 2 provides that the Act commences on a day to be fixed by proclamation.

The main purposes of the Act are detailed in section 4, which are:

- to establish an independent statutory body called RSHQ to regulate safety and health in the resources sector
- to establish the RSHQ employing office
- to provide for the Commissioner for Resources Safety and Health.

CFMMEU Response

- We Support an independent Statutory Body called RSHQ.
- The employing RSHQ office appears based on the consultation paper is fine and applies to employment practices of the government.
- We support a Commissioner for Resources Safety & Health. The role of this person is detailed below and also captured in our (attached Regulator model & submission).

Chief Executive Officer

RSHQ will be overseen by a Chief Executive Officer (CEO). Part 2, Division 3 deals with the appointment, functions, powers and employment conditions of the CEO.

The CEO will be responsible for:

- ensuring the effective and efficient administration and operation of RSHQ and the performance of its functions
- managing the organisational unit under the control of the CEO.

The CEO will be appointed by the Governor in Council under the RSHQ Act, not the Public Service Act 2008, on a term of not more than 5 years.

In accordance with the recommendations of the PMO report, the CEO will have overall responsibility for the operational performance of the regulator. The CWP Select Committee proposed that a board form part of the structure of the regulator. The Queensland Government response to the CWP Select Committee report provided that to ensure appropriate independence, the regulator should not be subject to a board or any other entity in its operational decision making. This could give rise to undue interference in the exercise of regulatory functions. For this reason, a board is not proposed.

In accordance with requirements under the Financial Accountability Act 2009 and the Statutory Bodies Financial Arrangements Act 1982, audit and accountability arrangements will be provided through the structure and governance of RSHQ and reported through annual financial reporting and RSHQ's annual report.

CFMMEU Response Below:

The CFMMEU supports the model attached. The CFMMEU believes that the regulator model put forward delivers the best results and systems moving into the future.

The following addresses the main points of the models and the CFMMEU views.

1. The minister must be in a standalone portfolio “Minster for Mining & Resources”. We do not believe that in an industry which is one of the state’s main exporters and the health and safety related issues that the minister has split portfolios. This is a must in our view.
2. The Commissioner for Health and Safety remains but must stand alone in an independent role. This role would report directly to the minister and have responsibility for ensuring real oversight of the industry. The role would also have an “Investigation Unit reporting directly to them. Will need a review of the role and responsibilities they currently have. This is must in our view.
3. The CEO reports directly to the Minster as well the role would be one of administration with direct responsibilities for the running of the following.
 - Administration
 - IT
 - Legal
 - Finance – ensuring budget in place for the commissioner and other agencies.
 - HR Services
 - Organizational services
4. There would be a board in place for Coal, Non-Coal and Transport & Ports Board. They must sit alone and **we do not support** the select committee’s recommendation to have it joint.
5. The Advisory committee remains as the same structure.
6. We believe that an “Accident Investigation Unit” be set up and come directly under the Commissioner office. The unit would report to the commissioner for health and safety, undertake investigations into major accidents & incidents for the Queensland for the purpose of coroners reports & legal proceedings. They would be an autonomous unit.

The CFMMEU doesn’t support the consultation and the information paper Appendix 2 “Proposed regulatory framework for resources safety and health in Queensland” and the role of the “Chief Executive Officer”. This role is one not supported by the CFMMEU for the reasons above and the attached documents from previous submissions.

We also believe the introduction of this role will diminish the role of the departments below them. We rely on our submission and the logic behind our regulator model.

Other Comments:

Part 7 - Amendments of Acts and subordinate legislation

Part 7 amends the Resources Safety Acts to:

- make consequential amendments to support the establishment of RSHQ – for example replacing references to the Chief Executive of DNRME with the CEO of RSHQ

- provide for the Commissioner for Resources Safety and Health and their functions, including removing references to the Commissioner for Mine Safety and Health and the operational or prosecutorial functions for that role
- enable the WHS Prosecutor to prosecute offences under these Acts
- enhance the functions of CSMHAC and MSHAC.

CFMMEU Response

The CFMMEU supports the establishment of the RSHQ but not the proposed role of the CEO within this structure as outlined in Appendix 2.

The CFMMEU supports the Commissioner for RSH and their functions in line with the CFMMEU Regulator Model (attached)

The CFMMEU supports the WHS prosecutor to prosecute offences under the Act. This is based on the CFMMEU Regulator Model and submission with an “Independent Accident Unit in place in mining”.

The CFMMEU supports enhanced functions of the CSMHAC & MSHAC.

Enhanced functions of CSMHAC and MSHAC

Sections 76 and 77 and sections 107 and 108 of the draft Bill enhance the functions of CSMHAC and MSHAC.

The PMO recommended the inclusion of an advisory council, however, this structure was not favoured by stakeholders. To achieve the intent of the PMO report, the functions of the existing advisory committees have been enhanced to provide a high-level strategic focus and to identify and prioritise risk areas for the sector. In addition, the advisory committees will be tasked with providing advice to the Minister on the performance of industry and the regulator in responding to the priority issues identified.

As noted in Part 4, a function of the Commissioner for Resources Safety and Health will be to fulfil the role of chairperson of CSMHAC and MSHAC.

The enhanced functions of CSMHAC and MSHAC provided for in Part 7 include:

- developing a 5-year strategic plan for improving the safety and health of persons at mines and persons who may be affected by mining operations
- periodically evaluating, and at least once each year updating, the 5-year strategic plan
- developing action plans to achieve measurable targets set in the 5-year strategic plan
- obtaining information from RSHQ to assess the fulfilment of the 5-year strategic plan and the action plans
- identifying and prioritising critical risks to the safety and health of persons at mines and persons who may be affected by mining operations
- providing advice to the mining industry about the risks mentioned above
- providing information to the Minister about the performance of RSHQ.

No changes have been made to existing provisions relating to the appointment, membership or governance arrangements for CSMHAC or MSHAC.

CFMMEU Response

The CFMMEU supports enhanced functions of the CSMHAC & MSHAC. The CFMMEU doesn't support the following aspects of this as outlined below.

- Doesn't support the Commissioner for RSH to undertake the role of chairperson of either advisory committee. The chairperson should be independent.
- The committee would be reporting directly back to the "Coal Board" as outlined in the CFMMEU submission (attached).

Utilising the WHS Prosecutor

The PMO recommended that the independent Office of the WHS Prosecutor be utilised for prosecuting serious offences under the resource's safety legislation. This recommendation responded to stakeholder feedback that the decision to exercise prosecutorial functions should not lie with an individual closely associated with either industry or the regulator, on the basis that such close associations may influence, or appear to influence, decision making.

Part 7 amends each of the Resources Safety Acts to enable the WHS Prosecutor to be utilised to prosecute offences.

The draft RSHQ Bill amends the Resources Safety Acts to provide that:

- only the WHS Prosecutor can prosecute serious offences under resources safety legislation
- prosecutions for less serious offences may be brought by the regulator or the WHS Prosecutor
- a person may request the WHS Prosecutor to consider whether to bring a prosecution for a serious offence. Where the WHS Prosecutor has decided not to bring a prosecution, a person would have the right to request that the WHS Prosecutor refer the matter to the Director of Public Prosecutions for consideration

Proceedings for offences

Part 7 amends existing provisions under the Resources Safety Acts to provide that proceedings for offences may be taken by:

- if the offence is a serious offence – the WHS Prosecutor; or
- otherwise – the CEO or the WHS Prosecutor.

The draft RSHQ Bill also allows the CEO to authorise in writing another appropriately qualified person to take a proceeding for an offence (other than a serious offence).

In deciding whether to bring a prosecution, the WHS prosecutor must have regard to any guidelines issued under section 11 of the Director of Public Prosecutions Act 1984.

What is a serious offence?

A serious offence is defined in Part 7 to be:

- **For the CSMHA: Section 81 of the draft RSHQ Bill** – A serious offence means an offence against section 34 of the Act if the contravention caused multiple deaths, caused grievous bodily harm, caused bodily harm, or involved exposure to a substance that is likely to cause death or grievous bodily harm; or an offence prescribed by regulation.

- **For the Explosives Act: Section 95 of the draft RSHQ Bill** – A serious offence means an offence against section 32 of the Act if the contravention caused multiple deaths, caused grievous bodily harm, caused bodily harm, or involved exposure to a substance that is likely to cause death or grievous bodily harm; or an offence prescribed by regulation.
- **For the MQSHA: Section 113 of the draft RSHQ Bill** – A serious offence means an offence against section 31 of the Act if the contravention caused multiple deaths, caused grievous bodily harm, caused bodily harm, or involved exposure to a substance that is likely to cause death or grievous bodily harm; or an offence prescribed by regulation.
- **For the P&G Act: Section 129 of the draft RSHQ Bill** – A serious offence means an offence against Chapter 9 of the Act if the act or omission that constitutes the offence caused any of the following circumstances: the death of, or grievous bodily harm to, more than 1 person; the death of, or grievous bodily harm to, only 1 person; the exposure of anyone to a substance likely to cause death or grievous bodily harm; or bodily harm; or an offence prescribed by regulation.

Information sharing between regulator and WHS Prosecutor

Similar to the WHS Act, Part 7 contains provisions to enable information sharing between the WHS Prosecutor and the CEO of RSHQ. These provisions provide that the WHS Prosecutor may ask the CEO for information relevant to the performance of a function of the WHS Prosecutor under the Resources Safety Acts. The CEO must take reasonable steps to provide the information, which includes documents.

Where the WHS Prosecutor brings a proceeding under a Resources Safety Act, Part 7 provides that the CEO has a duty to disclose to the WHS Prosecutor all information relevant to the proceeding, in the possession or control of the CEO.

Request for prosecution to be brought

Part 7 includes a new provision in each of the Resources Safety Acts to provide that any person may make a written request to the WHS Prosecutor to bring a prosecution for a serious offence under the Resources Safety Acts (similar to section 231 of the Work Health and Safety Act 2011).

A person may make a written request for a prosecution to be brought for a serious offence where:

- a person reasonably considers that an act or omission constitutes a serious offence under a Resources Safety Act;
- no prosecution has been brought in relation to the act or omission; and
- at least 6 months have elapsed from when the act or omission happened.

This provision replaces section 256 of the CMSHA and section 235 of the MQSHA. New provisions are included in the Explosives Act and the P&G Act which did not previously include specific provisions to enable requests to recommend prosecutions.

Part 7 provides that if a written submission is made, the WHS Prosecutor must respond to the submission in writing advising:

- whether the investigation is complete;
- if the investigation is completed, whether a prosecution has or will be brought; or
- if a prosecution has not been brought or will not be brought, give reasons why.

Further right of review

Similar to provisions contained in the WHS Act, Part 7 provides that if the response from the WHS Prosecutor advises that a prosecution will not be brought, a person has the right to request the WHS Prosecutor to refer the matter to the Director of Public Prosecutions (DPP) for consideration.

If a matter is referred, the DPP must consider the matter and within one month advise in writing whether a prosecution should be brought. If the WHS Prosecutor declines to follow advice given by the DPP to bring proceedings, the WHS Prosecutor must give written reasons for the decision. This approach adds an additional avenue of review to current arrangements.

CFMMEU Response

- The CFMMEU supports prosecutions being undertaken by the WHS prosecutor. This is based on the independent accident investigation unit being in place and functional as per the CFMMEU submissions.
- The CFMMEU believes that the current requirements under the CSMHA 1999 Section 256 below remains. We do not support the right to have any person recommend a prosecution.

256 Recommendation to prosecute

(1) The following persons may recommend to the commissioner that there be a prosecution for an offence against this Act—

- (a) an inspector;*
- (b) an industry safety and health representative;*
- (c) a site senior executive.*


(2) Subsection (1) does not limit the commissioner's power to prosecute.

- The role of the CEO role is not supported within the prosecution framework as the CFMMEU submission is the Commissioner office would undertake and be responsible for this.

The CFMMEU rely on its previous attached submissions in relation to both this consultation paper and the previous PMO reports.

The CFMMEU wish to place on the record it does not support certain aspects of the draft Bill which have been outlined within this response.

Regards



**Stephen Smyth on Behalf of the CFMMEU
Mining & Energy Division (Queensland Branch)**



1-3-2020
Appendix 5 Submission

**Construction, Forestry,
Mining & Energy Union**
Mining and Energy Division
Queensland District Branch
ABN 73 089 711 903

Brisbane

P.O. Box 508, Spring Hill Qld 4004
Level 2, 61 Bowen Street, Spring Hill 4000

F [REDACTED] F [REDACTED]

15 February 2019

IM Discussion Paper Stakeholder Feedback
Resources Safety and Health
Department of Natural Resources, Mine and Energy
Po Box 15216
City East Qld 4002

Please find attached the CFMEU Queensland Mining & Energy Submission.

INDUSTRIAL MANSLAUGHTER

1. *Are the current offence categories and maximum financial and imprisonment penalties for breaches of safety and health obligations under the Resources Safety Acts adequate to deter or address grossly negligent conduct causing an incident involving one or more fatalities? Please provide reasons for your view.*

No

Both the offence categories, and the offence penalties, within the *Coal Mining Safety and Health Act 1999* (CMSHA) are insufficient to deter, or address, grossly negligent conduct causing one or more fatalities.

Offence Categories

While the CMSHA places requirements on obligation holders to comply with the Act and Regulations (s. 37), 'take reasonable precautions' and 'exercise proper diligence' (s.38, (3)), and to refrain from doing 'anything willfully or recklessly that might adversely affect the safety and health of someone', there is no clear linkage between gross failure to comply with these requirements, and penalty provisions. There is, for example, no explicit recognition within the Act that the extent to which negligence on the part of coal mine operators, site senior executives or other obligation holders contributed to deaths and injuries should be a core factor to be considered when penalties are applied.

This lack of clarity is extremely unhelpful. If obligation holders cannot plainly see that negligent behaviour on their part will give rise to significantly higher penalties, then the legislative provisions are less likely to serve as a deterrent. If the linkages between negligence and penalties are not well defined, then it will be more difficult to successfully prosecute obligation holders, and to provide some measure of redress for coal mineworkers and their families when incidents occur.

Blackwater

45 Arthur Street
Blackwater Qld 4717

F [REDACTED]
F [REDACTED]

Dysart

Shop 24B Garden Plaza
Shannon Crescent
Dysart Qld 4745

F [REDACTED]
F [REDACTED]

Mackay

33 Milton Street
Mackay Qld 4740

F [REDACTED]
F [REDACTED]

Moranbah

Cnr Mills Avenue &
Bacon Street
Moranbah Qld 4744

F [REDACTED]
F [REDACTED]

Rockhampton

Level 5/156 Bolsover Street
Rockhampton Qld 4700

F [REDACTED]
F [REDACTED]

By contrast, new provisions in the *Work Health and Safety Act 2011* (WHS) explicitly describe the circumstances under which negligence on the part of corporations, executive officers, and senior officers, constitutes the indictable offence of industrial manslaughter. The core elements of this offence are clear. Companies, and their senior executives, operating outside of the mining industry now know that when they act, or fail to act, negligently; and this conduct substantially contributes to the death of a worker; they are liable to prosecution for industrial manslaughter. The greater clarity provided by the introduction of this specific offence should also assist the likelihood of successful prosecution of the worst types of breaches.

Nineteen workers have died at Queensland coal mines since 2001. Notwithstanding all of the efforts to improve mine safety performance over the years, the Queensland coal industry remains a high-risk workplace. The CMSHA should be amended to provide Queensland coal mineworkers and their families with the same level of confidence now enjoyed by workers in other industries that, when negligence on the part of companies, or their senior executives, results in the death of a worker there will be an unambiguous and substantial response.

Penalties

In addition to there being no clear linkage between negligence and penalty levels, the maximum penalties for contraventions of obligations causing death are manifestly inadequate to deal with circumstances involving grossly negligent conduct on the part of an obligation holder.

This inadequacy applies to both the level of penalty that can be imposed on a coal mine operator, or other company; and the penalty that can be imposed on individuals.

The stark discrepancy between the \$1.9 million fine that could be applied to a coal mine operator whose gross negligence resulted in the death of a worker; and the \$10 million maximum penalty that could be awarded under similar circumstances under the WHSA, cannot be sustained.

Similarly, the CMSHA maximum penalties of two, or three years imprisonment (where one, or multiple deaths occur); need to be more closely aligned with the new 20-year term of imprisonment in the WHSA.

It should be noted that the CFMEU is not advocating extensive imprisonment terms in all circumstances where a worker is killed. Rather, as with the new provisions of the WHSA, we believe that a higher maximum term of imprisonment needs to be available for potential use where criminal negligence on the part of an individual can be made out.

Failure to adjust CMSHA penalties in the context of both, the need to recognize the significance of negligent behavior, and the new WHSA penalties, would send an unfortunate signal to coal mineworkers that their lives are worth less than those of workers in other industries.

2. *If not, should industrial manslaughter offences be included in the Resources Safety Acts? If yes, who should the industrial manslaughter offences apply to?*

Yes.

Inclusion of an Industrial Manslaughter Offence

The CFMEU strongly believes that an industrial manslaughter offence should be included in the CMSHA. Indeed, we believe that it is impossible to reasonably justify any other course of action given the lack of a comparable offence dealing with negligence in the CMHSA; ongoing coal industry safety failures; and the illogicality of legislating to deter and respond to negligence in the non-mining sector, whilst avoiding the same action in a work environment every bit as challenging, if not more so, that the industries already covered by the WHSA amendments.

The arguments made by the independent *Best Practice Review of Workplace Health and Safety in Queensland* in favor of insertion of an industrial manslaughter offence into the WHSA apply equally well to the mining industry, and the CMSHA.

We note that the Queensland Resources Council (QRC) has previously argued that inclusion of an industrial manslaughter offence would somehow 'create a finger-pointing culture that ends the sharing of safety information'.¹ The QRC appears to be suggesting that there would be such a surge in prosecutions for industrial manslaughter that a climate of fear would be created. In reality, given that industrial manslaughter is an indictable offence, prosecutions will only take place as and when the Director of Public Prosecutions believes that all the elements of the offence can be sustained. There will be no 'open season' on companies and their executives unless those obligation holders have negligently caused mineworker deaths. As far as sharing of safety information is concerned, CMSHA obligation holders who fail to share health and safety information 'that other persons need to know to fulfil their obligations or duties under this Act' are committing an offence. We would hope and expect, that the QRC will be reinforcing this reality with their members.

Application of an Industrial Manslaughter Offence

Under the WHSA, both corporations (or 'persons conducting a business or undertaking' (PCBUs)) and their senior officers can be charged with industrial manslaughter. This approach reflects the Queensland Government's adoption of the reasoning contained within the *Best Practice Review* that the offence of industrial manslaughter should target those with the greatest capacity to influence the safety culture within an organization.

The CMSHA places safety and health obligations on a range of specific persons in Section 33 (2). It is the CFMEU's view that an industrial manslaughter offence would sensibly apply to all of those nominated persons. Negligence on the part of a contractor s. 33 (2) (d), or an 'erector or installer of plant' s. 33 (2) (f); or a manufacturer of plant s.33 (2) (e); should be treated no less seriously than negligence on the part of coal mine operator s.33 (2) (b). All of these parties would fall within the category of PCBU under the WHSA.

¹ Ian Macfarlane, *Rushed workplace laws risk undermining safety*, 11 October 2017.

3. *Alternatively, is there merit in strengthening the existing offence framework under the Resources Safety Acts without introducing separate industrial manslaughter offences, for example by introducing a circumstance of aggravation attracting a higher penalty where recklessness is proven as an element of the offence?*

As indicated, the CFMEU can see no reasonable justification for incorporating an industrial manslaughter protection within the WHSA, and not including the same provision within the CMSHA.

There is a real danger that any attempt to construct some alternate provision for inclusion in the mining acts will simply result in less deterrence, and less redress against negligence, in the mining sector than will apply in non-mining industries.

DISPUTE RESOLUTION

4. *Are additional dispute resolution processes needed under the CMSHA and MQSHA? Please provide reasons for your view, including how you consider the current processes are deficient.*

Yes.

The current provisions of the CMSHA which provide, at Sections 99 (5 - 7), 121 (1 - 3), and 275 for escalation of concerns raised by Site Safety and Health Representatives, Industry Safety and Health Representatives, and coal mineworkers are too limited.

The existing provisions do not adequately outline the pathway to be followed if workers, SSHRs or ISHRs are dissatisfied with an Inspector's investigation of a workplace health and safety matter. Section 160, which provides the Chief Inspector with the power to 'review and confirm, vary or set aside, directives'; does not deal with an Inspector's failure to issue a directive, or take other action, in the first place.

In addition, while the focus of existing provisions is understandably and appropriately on the adequacy and effectiveness of safety and health management systems, there are other safety and health issues which could be specifically included as matters subject to dispute resolution by an Inspector in the first instance.

5. *What types of dispute should be subject to these processes and how could any additional processes be integrated with the current approach in the CMSHA and MQSHA?*

Enhanced dispute resolution processes in the CMSHA should be applied to specific 'safety and health' matters. This approach would be similar to that used in the WHSA.

The specific 'safety and health' matters should reflect existing delineated obligations within the CMSHA, such as the obligations on coal mine operators outlined in Section 41. Under this scenario an ISHR or SSHR could request an Inspector investigate, for example, whether a site safety and health management system was being appropriately audited by the operator. Other particular areas of concern, such as the

adequacy of company investigations of incidents could be designated as 'specific safety and health matters' subject to the dispute resolution processes.

6. *Are dispute resolution processes needed under the P&G Act and Explosives Act frameworks?*

Yes.

It is both logical and appropriate for workers, and worker representatives, under these Acts to have access to safety and health dispute resolution processes similar to those applying in other industries.

7. *What approach may be most relevant or suited to the characteristics of the petroleum and gas and explosives industries?*

The CFMEU believes that the key principle to be applied is one of ensuring that workers and worker representatives in all industries have established, easy to use, and clear, mechanisms to escalate safety and health concerns; and to seek resolution of safety and health disputes.

PROHIBITION OF DISCRIMINATORY, COERCIVE AND MISLEADING CONDUCT

8. *Should workers in the resources industries have the same or very similar protection from discriminatory, coercive and misleading conduct, as workers in general workplaces in Queensland? Please provide reasons for your view.*

Yes.

The current protections within the CMHSA are too limited. There is no rational basis on which it could be argued that mine workers are any less in need of broader and more effective protection against discriminatory, coercive and misleading conduct than other workers. Indeed, the CFMEU believes that discrimination against workers who have exercised their right to act on safety and health concerns continues to be an issue at some Queensland coal mines.

9. *Should penalties be increased to be consistent with the WHSA 2011? Please provide reasons for your view.*

Yes.

Current penalty levels of 40 penalty units under Section 275AA; and 200 penalty units under Section 274 (2); are significantly lower than those in the WHSA (where the maximum penalty for the discrimination, coercion, and misrepresentation offences is 1000 penalty units). Again, there is no logical basis for this inconsistency. Both CMHSA penalties are also intrinsically manifestly inadequate given the seriousness of the offences, and the importance of fostering an environment in which workers feel comfortable to raise safety concerns and to withdraw their labour as, and if, necessary.

10. *The comparable provisions in the WHSA 2011 are arguably broader and more comprehensive than the reprisal provisions in the Resources Safety Acts. Stakeholders are invited to specifically comment on whether these provisions will provide greater protection to persons who report unsafe or illegal practices at resource industry sites from retribution or victimisation by the employer or colleagues.*

The WHSA protections against discriminatory, coercive and misleading conduct are considerably broader, and provide far greater protections under a range of circumstances, than is presently available under the CMSHA.

In addition to protecting workers who report health and safety issues and concerns from reprisal, the WHSA also prohibits discriminatory conduct against any worker on the grounds that he or she:

- Holds, or proposes to hold, any safety and health representative role
- Exercises powers available under the Act
- Is involved with a process aimed at 'resolving a work health and safety issue'
- Takes or proposes to take action to 'seek compliance by any person' in accordance with the Act.

The CFMEU believes that all of these protections should also be available to mine workers.

The WHSA also makes it an offence to 'request, instruct, induce, encourage, authorize or assist another person to engage in discriminatory conduct', (section 107); to coerce a person to perform or not to perform powers and functions under the Act (section 108); and to 'knowingly or recklessly make a false or misleading representation' about a worker's safety and health rights (section 109).

While the existing CMSHA Section 275AA encompasses some aspects of this conduct, the CFMEU believes that the offences of coercion and misrepresentation need to be more clearly dealt with in the mining acts.

We note also that the WHSA provides that when prosecutions for discriminatory conduct occur, defendants need to prove, on the balance of probabilities, that discrimination was 'not the dominant reason' for their behavior (section 110 (2)). Again, we would support such an approach being adopted in the CMSHA. As it stands, mineworkers, and, in particular, labor hire employees face significant practical challenges in being able to prove that actions such as dismissal are, in effect, reprisal actions.

11. *Is union representation of workers adequate under the current framework in the CMSHA and MQSHA? Please provide reasons for your view.*

Yes

The CFMEU believes the current CMSHA and MQSHA framework addresses the right level of union representation. We do not support or believe the legislation needs to be broadened to other unions within the coal mining industry.

The CMSHA 1999 provides the required union representatives to the workers which is the CFMEU Mining and Energy Division. The CMSHA 1999 is clear and does not need to be alerted or changed. The CFMEU M&E division believe the CMSHA covers this point for coal mining.

The CFMEU believes that the introduction of other possible entry permit holders in coal who do not have the resources or are skilled and competent will reduce the level of protections to coal mine workers. The CMSHA is clear on the required competencies which is required to be held for the undertaking power and functions under the Act. The CFMEU is the principal union in coal. The role of workers safety reps (District Union Inspector) now referred to as Industry Safety & Health Representative have been around since the late 1920's in coal.

“The system of appointing mine-site representative/check inspectors dates back to the early 1900s in Queensland and New South Wales while industry-based full-time representatives have been operating for over 60 years. It appears to have originated as variation or modification of the system of employee/workmen inspectors – a scheme introduced in the UK at the end of the 19th century to provide an additional and more worker focused measure of protection to mineworkers. District check inspectors (ISHR) played a valuable role in promoting OHS in the Queensland mining industry, including visiting small mines that would otherwise not have had much in the way of OHS expertise (either on the management or worker side). Coalmining unions appointed workmen’s inspectors (also known as ‘check inspectors’ in Australia) from the early 1870s to undertake independent inspections of mines and report safety issues. First introduced into the Hunter Valley coalfields, the system spread to other districts of New South Wales (NSW), Queensland and other states by the early 20th century. Site check inspectors were appointed at each mine, while district check inspectors covered all mines in a particular region. The position of check inspector was recognized in mine health and safety legislation and their rights and powers strengthened following a series of mine disasters. Check inspectors, especially district check inspectors, were experienced and knowledgeable miners elected to office like other union officials. Despite instances of friction with mine owners, they earned widespread respect for their role in mining communities (Quinlan, 2014).

The coalminers’ union—the Mining and Energy Division of the Construction, Forestry, Mining and Energy Union (CFMEU)—continues to administer the check inspector system including paying the salary of district inspectors (now known as Industry Safety and Health Representatives-ISHRs), and training site check inspectors (now Site Safety and Health Representatives-SSHRs). In Queensland, current regulatory provisions governing the rights and functions of representatives are found in Parts 7 and 8 of the Coal Mining Safety and Health Act 1999. Part 7 requires the election of up to two SSHRs for each mine. They must be experienced miners holding competencies in applied risk management (RIIRIS301B), conducting safety and health investigations (RIIOHS301A) and communication (RIICOM301B). Their functions under section 99 (1) include inspecting the mine,

reviewing risk control procedures, detecting unsafe practices and conditions, and undertaking appropriate actions to protect miners, as well as investigating miners' complaints. They also have powers to examine any documents relevant to OHS held by the Site Senior Executive-SSE (section 100). The SSE is obliged to inform SSHRs of work injuries and illnesses, high potential incidents, changes to the mine that might affect OHS, and the visits and actions of mines inspectors (section 106).

The SSHR must inform the SSE if they believe the health and safety management system is ineffective or inadequate, and if dissatisfied with the response, inform a mines inspector who is then obliged to make an inspection and record the results in the mine record (sub-sections 99 (5)-(6)). Additionally, section 101 authorizes SSHRs to order the suspension of mining operations if they reasonably believe there is an immediate danger (sub-sections 101 (3)-(4)). Section 95 (3) stipulates a SSHR must perform their functions and exercise their powers for OHS purposes and no other purpose, and section 104 prohibits the SSHR from unnecessarily impeding production.

Part 8 provides that the CFMEU may, after a ballot, appoint and pay up to three appropriately qualified persons (holders of a first- or second-class certificate of competency or a deputy's certificate of competency), to act as full-time ISHRs for a period of four years. Their functions include participating in accident investigations, high potential incidents (HPI) and other OHS matters, assisting initiatives to improve OHS, as well as the functions given to SSHRs (section 118). Under section 119, their powers include those given to SSHRs along with powers to make inquiries about OHS operations relevant to coalmine workers, copy OHS management system documents, and require the person in control of a coalmine to provide reasonable help in exercising their powers. Under section 121, an ISHR who believes a mine's safety and health management system is inadequate or ineffective must inform the SSE, and if corrective action is not taken, they must inform the mines inspector, who is required to investigate. Section 167 empowers ISHRs to issue a directive to suspend operations in all or part of the mine if they believe the risk is not at an acceptable level. As with SSHRs, section 117 requires ISHRs to exercise their statutory powers and functions solely 'for a safety and health purpose', while section 120 provides that they should not 'unnecessarily impede production'.

These measures differ somewhat from those applying more generally to worker representation on OHS. The provisions for ISHRs establish unique measures governing the appointment of full-time health and safety officials by a union with extensive powers of entry into workplaces to inspect and investigate a wide spectrum of OHS management practices and to suspend operations where they believe the risk warrants this. There are few similar statutory arrangements outside the mining industry in Australia or elsewhere, although there are some parallels with those relating to union regional representatives for workers in small firms in Sweden. However, the extensive powers of SSHRs and ISHRs are qualified by caveats which require cognizance of impeding productivity and prohibit performing functions or exercising powers for anything but OHS purposes. These features and the ways they were operationalized by SSHRs and ISHRs in practice were of particular interest in our study"²

² 2. Safeguarding Workers: A Study of Health and Safety Representatives in the Queensland Coalmining Industry, 1990-2013- David Walters, Richard Johnstone, Michael Quinlan and Emma Wadsworth

The current definition in the Act addresses the industrial organization is suitable. The CFMEU does not support or believes that this needs to be expanded or changes within the CMSHA.

The role of the ISHR & SSHR are protective roles elected by their peers and all coal mine workers no matter what union or non-union affiliate they may hold. These elected people are experienced and competent in all aspects of mining. The CMSHA & MQSHA legislation works and has been established with workers representatives and provides for well trained and experienced miners who hold statutory certificates to undertake powers and functions.

12. *If not, how could entry permit holders be integrated with the current approach to worker representation in the CMSHA and MQSHA?*

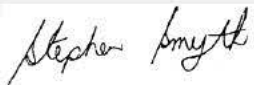
The CFMEU does not support the implementation of entry permit holders as an approach to workers' representation into the CMSHA and MQSHA.

13. *Should worker representation provisions be included in the P&G Act and Explosives Act? Please provide reasons for your view.*

Yes

There needs to be legislation developed to allow for workers' representation into the P&G Act and Explosives Act similar to the current framework within the CMSHA and MQSHA. They will need to hold the required competencies and experience to undertake the role. This could be similar to the provisions which are contained within the CMSHA for the ISHR's.

Signed on behalf of the CFMEU M&E Division Queensland.



Stephen Smyth
CFMEU District President