Mine Managers
Association of Australia

MINE MANAGERS' ASSOCIATION OF AUSTRALIA INCORPORATED
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17 May 2021

NSW Resource Regulator,
PO Box 344,
Hunter Region Mail Centre,
NSW, 2310, Australia

Email: rr.feedback@planning.nsw.gov.au

Dear Secretary,

Subject: Comment – Proposed Amendments to the Work Health and Safety (Mines and Petroleum Sites) Act 2013

On behalf of the Mine Managers' Association of Australia ("the Association"), please accept the following comments on the proposed amendments to the Work Health and Safety (Mines and Petroleum Sites) Act 2013 ("the WHS (MPS) Act") as detailed in the Discussion Paper dated April 2021. The Association supports the periodic review of mining safety legislation to ensure it remains fit for purpose, reflects contemporary best practice and delivers optimum safety outcomes for the industry.

We appreciate this opportunity to provide feedback.

The Association's predecessor, the Colliery Managers' Association of New South Wales, was constituted in the Hunter Valley in 1942. Since its inception the Association has grown to represent members in most states of the Commonwealth and New Zealand. Our membership has grown to 420 members and membership, whilst mainly directed to practising mine managers, also includes a diverse range of senior management in the coal mining industry: from chairmen and directors of companies, mines inspectors, academics, consultants and senior technical managers. In NSW nearly all practising mine managers (MMEs), both open cut and underground, are members of the Association and, to our knowledge, all practising underground mine managers (UMMs) and a significant number of Site Senior Executives (SSEs) in Queensland are also members.

The objectives of our Association are:

- To advance the interests, and raise the status of members,
- To maintain member's competencies and continue their professional development,
- To improve health and safety in the workplace,
- To provide support to members in employment related issues, and
- To contribute to sustainable mine development and industry growth.

The Association plans to achieve its objects by:

- Developing policies to support the objects of the Association, the conduct and professional development of members,

- Organising technical seminars to advance the art and science of modern mine management theory and practice and the knowledge of members,
- Providing representation on industry committees formed to frame and/or review legislation, policy, or advice,
- Organising regular meetings or communication sessions to provide members the opportunity to effectively network with their peers,
- Encouraging the use of risk management and other contemporary safety techniques to identify and control risks in the mining industry,
- Promoting adequate returns on mining investment as the means of causing industry growth, optimising resource recovery, and providing employment opportunities,
- Promoting sound environmental management, and sustainable development, and
- Promoting industry standardisation of competencies, maintenance of competencies and legislative requirements throughout Australia.

In addition to the above, the Association believes best safety outcomes are achieved by:

- Genuine consultation between all industry stakeholders;
- Simple and fit for purpose risk based legislation;
- The promotion of innovation and technology throughout the industry to solve technical issues; and
- The use of trained and competent personnel at all levels of a mining operation.

To this end, we have always advocated for the senior site official to be the holder of a Manager of Mining Engineering competency, believing that this qualification is best suited to manage the complex and often inter-related risks associated with mining operations, especially underground coal mining.

While not the focus of this review, we also believe mining related safety legislation should be, where possible, harmonised across States and territories. The risks associated with mining do not recognise state borders and given many companies operate in multiple jurisdictions, simple, uniform safety legislation across all States is a sensible objective. Efforts to harmonise mine safety legislation across national jurisdictions are supported. With most of our members based in NSW and Queensland, we feel we are in a strong position to offer comment on many of the proposals being considered in NSW and currently legislated in Queensland.

Given most of our members are employed in the coal sector, we have limited our responses to that area as we believe this is where our expertise lies. We have declined the opportunity to comment on those areas where we have no involvement at present (eg opal mining).

Specifically, we make the following comments on the matters raised in the discussion paper:

(i) Should there be two types of investigations contained in the WHS (MPS) Act?

The Association supports elements of Review Recommendation 6, but not its entirety. We believe the current system for causal investigations in NSW is generally working, and when properly implemented, both at site and by the Resource Regulator, is achieving the desired

outcomes. We feel the NSW Causal Investigation Policy now in place has sufficient scope to enable timely investigations following certain incidents, as required. Accordingly, we support formalising a reference to the Resource Regulator's Causal Investigation Policy in legislation and renaming Part 3 of the WHS (MPS) Act "Incident Notification and Investigation". It also seems logical to prescribe the two types of investigation open to the Resource Regulator – causal and enforcement. On balance, we believe that the Resource Regulator should continue to undertake causal investigations, with the opportunity for the relevant mine operator to review the outcomes before publishing more widely.

We do not believe it's necessary to include a new head of power to effect the policy.

The Association supports the view that any investigation, either by the Resource Regulator or the site operator, should include "contributing factors" and employ a "systematic approach", and the site's SMS should reflect these requirements. We believe these principles are already in place across mine operations in NSW, and the legislation could be amended to ensure this is made clear.

We do not feel it necessary to adopt the Queensland model given that members of our association in NSW feel the current system performs satisfactorily.

(ii) Should persons named in causal investigation reports provided to the Resources Regulator be protected from having that information used as evidence against them in the event that enforcement action is taken?

The Association strongly believes that any person named in the causal investigation report (irrespective of whether prepared by the Resource Regulator or the mine operator) must be afforded protections to ensure that the information in the report is not used against them in the event that enforcement action is ultimately pursued. To allow otherwise will only result is less than optimal investigation outcomes following an incident, will trigger a more legalistic approach by sites and will limit or delay information provided to industry immediately following an incident.

(iii) Should the function of mine SHRs be expanded beyond the HSR functions under the WHS Act and previous mine safety legislation to enable them to participate in investigations? If so, are there any limitations that may be warranted on its exercise?

The Association believes that investigation teams should comprise the best qualified persons for any given incident. Rather than a prescribed expansion of the functions of mine SHR's to automatically participate in an investigation, we believe that the mine SHR should be consulted as part of the scoping session for the investigation, and to seek their input into the design and execution of the investigation accordingly. In some cases, this may facilitate the mine SHR's participation, but it should not be mandatory. We believe this reflects practice generally occurring at many sites now.

Consultation at the scoping phase rather than the powers of mandatory participation will also negate instances where industrial matters or cultural issues peculiar to a site may cause the investigation to be impeded, delayed or result in less-than-optimal outcomes.

If it is ultimately accepted, as part of this review, that mine SHR's are afforded the power to participate in site investigations, we believe that the mine SHR must have first undertaken an appropriate formal course in accident/incident investigation, and are competent to participate in the investigation.

Where a mine SHR is part of the investigation team, it is essential that any individual being interviewed pursuant to the investigation should have the right to exclude the mine SHR from the interview if he or she so requests. This is important where site issues involving individuals may cause distress or discomfort for the person being interviewed. We also feel this caveat will help deliver the best possible investigation outcomes.

(iv) Do you have any concerns regarding the adoption of the amendments for appointment of industry SHRs by the Minister?

The Association supports the need for probity checks for industry SHR appointments.

At present, the Association is not aware of any compelling need for additional industry SHR's. Accordingly, we do not support the proposed amendments to allow additional appointments at this stage.

(v) Do you agree with extending industry SHRs to mines other than coal mines?

The Association has no position on this matter given our membership is almost exclusively in the coal sector.

(vi) Should the WHS (MPS) Act be amended to include provisions equivalent to sections 146 and 148 of the WHS Act?

Yes.

(vii) Should the WHS (MPS) Act be amended to amend the purpose statement for Boards of Inquiry to include 'contributing factors', and to explicitly allow for high potential emerging and systemic issues and the making of potential findings and recommendations to reduce the likelihood of future accidents and incidents?

Yes.

(viii) Should the WHS (MPS) Regulation be amended to clarify that the MPCB can appoint a person as an assessor?

Yes.

(ix) Is clarification required in relation to rock and coal bursts and related pressure bursts being a principal mining hazard?

No. For underground coal mines, current legislation regarding this risk is appropriate. For many mining operations, the risk is not present. If there is the potential that such a hazard

exists and can cause multiple fatalities, then by definition it is a Principal Mining Hazard pursuant to the current legislation.

The terms to describe seismic events, such a coal burst, rock burst, pressure burst and bumps are often loosely used within the industry. It is recommended that expert geotechnical advice is first obtained to clarify definitions, and any amendments that may result from this review.

(x) Are there any elements of the Global Industry Standards on Tailings Management that should be prescribed in the WHS (MPS) Regulation?

Tailings management is a specialist area best regulated by a broad, risk-based framework in legislation, with reference to national and international standards where appropriate in guidance material. As noted in the Discussion Paper, current legislation and guidance material makes reference to many of the key elements of the Global Industry Standard already. In addition, some higher risk tailings dams are subject to the Dams Safety Act and Dam Safety NSW. The Association believes this is sufficient.

The Association believes the only amendment that could be considered is for a ***tailings facility manager*** or ***executive*** to be nominated in the site management system where these facilities exist, clearly identifying who is responsible for the safe design and operation of the tailings dam. By default, or where not nominated, that position should be the operator.

(xi) Should Schedule 6 of the WHS (MPS) Regulation be amended to include sampling over 80% of a shift, require all respirable dust samples tested for silica, and include more detail on sampling of the drill and blast area, as well as areas involving mobile equipment and maintenance, coal handling preparation and mobile crushing plant?

Yes.

(xii) Should the WHS (MPS) Regulation be amended to require sampling and analysis of respirable quartz at non-coal mines, similar to the requirements in clause 86 and Schedule 6?

Given our membership being almost exclusively in the coal sector, the Association does not have a position on this matter.

(xiii) Should the WHS (MPS) Regulation be amended to provide certain exemptions for small quarries?

Refer response to (xii) above.

(xiv) The Resources Regulator is currently addressing this issue of clarification of safety devices like oxygen candles in refuge chambers through guidance. Should the Resources Regulator's position be made explicit in the WHS (MPS) Regulation?

To avoid any confusion – yes.

(xv) Should the WHS (MPS) Regulation be amended to include a 'note' under clauses 5(2) and 5(3) of Schedule 4 to refer the reader to the defined terms of 'underground coal mine' and 'underground mine' in clause 3 of the WHS (MPS) Regulation?

Yes.

(xvi) Should emergency sealing in clause 68 of the WHS (MPS) Regulation make provision for re-entry and, if so, include an airlock?

Emergency sealing can occur for the whole or part of the mine. In either case, re-entry may or may not be contemplated. In an ideal world, airlocks would be considered as part of the sealing process if re-entry was contemplated. In certain circumstances, however, this may not be possible, and types of airlocks can be constructed later.

Prescription needs to be applied carefully to encompass the wide range of circumstances that may arise in an emergency sealing situation. Not all seals and entries will require airlocks to enable a safe re-entry strategy to the mine or part of the mine. The Association believes the Queensland regulation provides a good template for this matter (refer s156 Queensland Coal Mining Safety and Health Regulation 2017).

Any prescription must provide for a reasonable transition period, exemptions for existing installations, etc.

(xvii) Should the emergency plan include more detail in relation to testing of, and training in, the emergency plan and mine rescue? What additional detail should be included?

In general, yes. The Association believes the Queensland regulation provides a good template for this matter (refer s171 Queensland Coal Mining Safety and Health Regulation 2017 and Recognised Standard RS8 "Conduct of Mine Emergency Exercises").

It is noted consultation with experts from Mines Rescue would be useful in this regard, and the current review of the Mines Rescue function should be completed before any changes are made to the legislation.

(xviii) Should the WHS (MPS) Regulation be amended to include a requirement for mine operators to display aspects of the escape and rescue plan, including exits, refuges, firefighting equipment, communications and oxygen stations and to ensure mine workers have a reasonable opportunity to utilise the exits during periodic training?

Yes – refer to response (xvii). The Association believes the Queensland regulation provides a good template for this matter (refer s168 and s171 Queensland Coal Mining Safety and Health Regulation 2017 and Recognised Standard RS8 "Conduct of Mine Emergency Exercises").

(xix) Should the WHS (MPS) Regulation be amended so that an automatic update provision (similar to that under clause 78) is applied to all references to standards in the Regulation?

The comment from Ampcontrol as detailed in the Discussion Paper is relevant. Often, the Resource Regulator and other industry stakeholders do not have control or input into how Standards are amended, especially international standards. This can sometimes lead to serious discrepancies between the Standard and what is possible or even safe in an operating mine. Thus, a change to a Standard may have immediate legislative affect and make compliance impossible.

A recent example were the changes to workplace exposure standard for airborne contaminants by SafeWork Australia. Without warning, the standard was amended so that the TWA for carbon dioxide was lowered from 1.25% to 0.5%. As a result, many underground coal mines operating in high CO_2 environments were immediately unable to comply with this new limit.

(xx) Is it appropriate to continue to refer to standards or should the relevant parts be prescribed within the WHS (MPS) Regulation?

References to Standards should continue rather than prescribing relevant parts into legislation. Since Standards will still apply in some form, mine operators will still have to be conversant with those Standards, even if key elements are legislated.

(xxi) Should the WHS (MPS) Regulation be amended to enable a professional engineering demonstration of an alternate means of compliance that entails a level of risk equivalent to, or better than, complying with a prescribed standard?

Yes. The Association supports a legislated outcome that enables alternate designs or systems to manage risks (and delivering similar or better safety outcome to those measures prescribed in legislation) that can be verified in a clear and unambiguous manner.

(xxii) Is the Resources Regulator's Innovation policy sufficient for enabling consideration of innovations prevented by legislation or technical standards?

Yes. It would still be prudent, however, to strengthen this area by amending the WHS (MPS) Act as noted in (xxi) above, and then amending the Innovation Policy to reference the Act accordingly.

(xxiii) Do you support the proposed amendments to the explosion-protection provisions in clauses 78(2) and 78(3) of the WHS (MPS) Regulation to make it explicit that electrical plant used in an underground coal mine must comply with the requirements of the certificate of conformity or Departmental approval?

The Association has always been of the view that current legislation required compliance with a certificate or approval. If this is not the case, or if there is confusion, we support the amendment.

(xxiv) Do you support the proposal to amend clause 80 of the WHS (MPS) Regulation to incorporate the provisions outlined in the class exemption titled Work Health and Safety (Mines and Petroleum Sites) Exemption (Use of Cables in Hazardous Zones) 2020 as

published in the NSW Government Gazette No 171 of 7 August 2020?

Yes.

(xxv) Should the wording in clause 93 of the WHS (MPS) Regulation be amended to be consistent with clause 89 to ensure that consultation with emergency services is included when the emergency plans are tested?

No. The current requirement in Clause 93 regarding tests of the emergency plan is sufficient. Consultation with the myriad of emergency services is onerous and time consuming for all parties, and may not be possible to include in all site tests of the system. The difference between the ***requirements*** of the emergency system and its ***testing*** is adequately reflected in the legislation.

(xxvi) Do you agree with amending 128(5) of the WHS (MPS) Regulation to make exceedances of diesel particulate matter and substances and mixtures specified in clause 50 of the WHS Regulation a high potential incident?

With regard diesel particulate matter, yes – but with a 12 to 18 month transition period to allow industry and the Resource Regulator to develop appropriate monitoring and reporting systems.

The Association does not support broadening this requirement to the substances and mixtures specified in Clause 50 of the WHS Regulation at this stage. It is preferable to deal with these contaminants on a case-by-case basis as part of a risk assessment for that site. For example, it would not be useful reporting minor exceedances of carbon dioxide as a HPI in mines operating in high CO_2 environments.

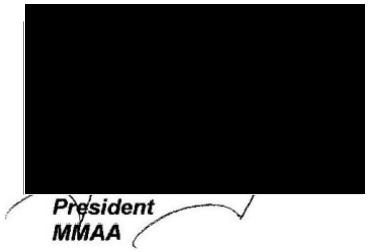
(xxvii) Should Schedule 3 of the WHS (MPS) Regulation be amended to include raised bore activity as a high risk activity?

Yes – noting that it should only apply to raise bores greater than 100m long ***and*** 3m diameter. Those excavations that do not meet these criteria should not be captured by the requirements of a high-risk activity. It is noted that there are instances where a raise bore is required as a matter of urgency, and provisions must be made in the legislation to enable a waiting period of less than three months in these circumstances.

(xxviii) Should the WHS (MPS) Regulation be amended to include a requirement that at least one person who has undertaken safety training as specified by the regulator be present at an opal mine when mining activity is taking place?

The Association has no members principally involved in opal mining. Accordingly, we make no comment on this matter.

I trust this feedback is useful for your deliberations concerning proposals to amend the WHS (MPS) Act. Should you require any clarification from the Association or indeed any further information on these matters, we would be pleased to provide that detail by contacting me on 0418 360 925, or the Secretary, Ray Robinson on 0419 545 767.



President
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