WHS(M&P) Act

Clause 15 Immediate notification is an inappropriate requirement when taken literally, and it is industry's experience that literal interpretations by the Resource Regulator are becoming increasingly common. In an emergency there often higher priorities (such as safeguarding life) than making an immediate phone call to the Resource Regulator. Conversely there are many dangerous incidents where immediate notification adds no value and in fact wastes time and resources as insufficient information is available at the time to provide an informed notification. In both these cases the requirement for "immediate" notification is counter-productive. Industry understands and fully supports the concept that prompt notification is necessary for a wide range of reasons and has no objection to this. The word "immediate" is not however suitable. Notification should be 'as soon as practicable given the nature of the event and hierarchy of needs' or 'without unnecessary delay' or words to that effect

Clause 49 & 50 Industry fully supports the right of the regulator to issue Improvement and Prohibition notices and understands the value that they provide in safeguarding worker and ensuring compliance with legislation however with the move away from prescriptive legislation there is much more interpretation and much less clarity in what constitutes a breach. It is suggested that the process for dispute and fair arbitration in respect to notices be included clarified in legislation.

Part 8 – Representation of the needs of UG metalliferous mining by NSAC and MCB is considered inadequate by a large number of mine operators. This may be the result of the industry's representative body limitations, the number of times the Boards meet or the structure of the bodies. Whatever the reason(s) they are failing a significant part of the industry. Some suggestions are including additional industry representative bodies (particularly a body aligned with metalliferous mining), legislating the need for representative bodies (industry and unions) to demonstrate genuine consultation with their constituents, release of an agenda and call for comments prior to sittings and a release of the recommendations for comment after the meetings (if these are being published then this is not well known to others)and/or longer or more frequent meetings to allow more matters to be considered or matters to be considered in more depth.

WHS(M&P) Regulations

Clause 6 (2) - Suggest revision to allow digital acceptance

Clause 7 ditto

Clause 19-Subdivision 4 is very relevant to contractors carrying out work such as mining or construction however the requirements are unduly onerous when applied to a myriad of smaller contractors involved in lower risk activities. Clause 19 (b) attempts to address this and excludes some obvious exemptions however the clause as written provides no avenue to the PCBU use a risk-based approach to assess reasonable exemptions. As an example a mine waste collector undertakes similar activities to a delivery contractor however does not have the same exemption. Also the

legislation does not adequately cater for contractor labour hire where the contractor employee act indistinguishably from an employee of the mine.

I suggest Clause 19(b) have subclause (v) added with words to the effect 'a business or service not specifically associated with the extraction of mine or petroleum products, is delivered remote from the winning of ore or petroleum' and (vi) a labour hire business or service where the operational control and supervision of employees is assumed solely by the operator of the mine or petroleum site

Clause 27 The intent of this clause is clear however it is not practical to Implement it as it is written The legislation states that "*the supervisor of the incoming shift acknowledges in writing to the supervisor of the outgoing shift that the content of the report has been communicated to workers on the incoming shift and the supervisor of the incoming shift signs (or electronically signs) the acknowledgment"* In a practical sense the incoming supervisor receives the report from the outgoing supervisor and acknowledges that he/she has received this in writing. It is then his/her responsibility to provide relevant information to the incoming crew – but this cannot then formally communicated to the outgoing supervisor (that at such point in time should have left site). Suggested that (d) be deleted – (c) legally obliges the incoming supervisor to pass on the information – apart from the impracticability of (d) it adds no value.

Clause 31 (2)(b) – this clause mandates that *any dealing with an explosive or explosive precursor at the mine is in compliance with the Explosives Act 2003 and Australian Standard AS 2187 Explosives—Storage, transport and use*. Australian Standards (as well as guidelines, codes of conduct and the like) are very useful and resources that greatly assist in providing a safe workplace. The use of the word "must" in this clause makes all aspects of such reference material mandatory. As a specific example, AS 2187 requires 150mm lettering on explosives vehicles which is appropriate on registered roads. On our mine site, we have additional identification of a red flashing light and radio communication protocols yet have received a non-compliance notice because our lettering is only 100mm. Granted, it would not be difficult to simply comply but that is not the point – it would add no value. Standards, guidelines and codes should not be mandatory and should allow risk based decision making, practicability and common sense to prevail.

Clause 52(c) The intent of this clause is clear however it is not practical to Implement it as it is written. Ground support requirements are provided to operators installing support and supervisors – this ensures the designated ground support is installed. In essence the plans are provided to workers requiring the information but not to ALL workers nor necessarily displayed nor does this add value. Suggest 52(c) be reworded 'plans of support arrangements for the area are prepared and provided to workers at the mine responsible for installation of the ground support and other workers as required or requested'.

Clause 53 1(b) & (c) These requirements are unnecessary and waste time and resources given that legislation is now in place mandating the concentration limits for diesel particulates and other exhaust products in the UG environment. Legislation should be either 'tell me what to do' or 'tell me how to do it' – not both. Provided the mine is effectively managing diesel emission to comply with legislated limits and therefore worker exposure and risk is acceptable, how this is done should

not be regulated. This is a case where legislation can be simplified while still complying with legislative requirements to protect workers.

Clause 59(3) The 1m3/second requirement is another example of a prescriptive requirement that is not linked to the legislated exposure limits. It wastes valuable resources without justification. It does however provide a level of protection for anomalous conditions that may not be show by 'spot' monitoring. It is suggested that the legislation be modified to read "The mine operator must ensure that, at every point in areas of the mine where persons work or travel, the ventilation system for the mine provides at least one cubic metre of air per second *unless air quality at that point is*

- *continually monitored*
- *remains within prescribed limits*
- *there is an automated alarm that warns workers in the event that warns workers to leave the area in the event that prescribed limits are exceeded*.

Clause 88 (2) There is concern regarding interpretation of (i) and (ii). Where the interpretation is that radio communication and safe place of refuge communication protocols satisfy (i) and task allocation and communication with the UG Shift Supervisor satisfies (ii) then this mirrors industry norms and is a practicable approach. If the interpretation is that some form of real-time tracking system is implemented, then this clause is problematic and impracticable. In addition, although working tasks (and by default locations) are formally allocated at start of shift, individual's movements are monitored by the UG Shift Supervisor and the UG Shift Supervisor is the "readily available" source of a person's likely location. Albeit some mines have 'control rooms' that track movements within a mine, employee location is a by-product of a system built primarily for reporting and productivity. Cost of implementation would exceed $500,000 per year and is not practicable for many operations. Real-time individual tracking would potentially cost twice that to implement and do little else.

Clause 97 (7) (a) to (g) reference "refuge chamber" rather than a "safe place of refuge" In UG metalliferous mines Fresh Air Bases located in intake air provide safe and valid places to take refuge in an emergency and including one where the mine atmosphere becomes irrespirable. References to "refuge chamber" should be replaced with "safe place of refuge".

Clause 100 (3)(b) The requirement to provide training to use a self-rescuer in a "simulated work environment" has been a laudable improvement to the regulations and is generally well supported by industry. Notwithstanding this, the requirement (b) mandating a 6 monthly retraining was subject to concern by industry both in the original consultation process and has been on an ongoing basis through the MISAC and subsequent MISHEF meetings. It is disappointing that all request to review this requirement have met with no action. This represents another piece of prescriptive legislation with no regard to the cost to industry and without (to industry's knowledge) an evidence based rationale. I suggest that industry would very accepting of 6 monthly refresher training in the form of information and demonstration of use, however the current requirement for simulated work environment is time consuming, costly and takes valuable resources away from other important safety initiatives without a demonstrated benefit. A more recent concern in the face of COVID-19 is the necessary sharing of self rescuer demonstrators; albeit they are sterilised after each use, this still

adds an area of risk and worker concern. The consultation process is of little value when the widely held views of industry are given no weight and no risk-based justification is provided for legislation that adversely affects industry productivity.

Clause 102(d) There does not appear to be a rationale for this prescriptive clause, at least in UG metalliferous mines. Any such requirement should come out of the Emergency Plan process and any associated risk assessments. If power goes out and vent is lost then workers vacate the mine. If power to a particular area needs to be isolated then this may not be possible from the surface in any case. Suggest that this be delete or revised to read "a competence person must be available on the surface to switch off and switch on the supply of power to the underground parts of the mine if required by the Emergency Plan

Clause 111 is not practicable but it appears to have been repealed.

Clause 128(5)(e) There appears no justification for making burial of un-manned equipment a notifiable event. Un-manned 'remote' loaders are specifically mandated to ensure that workers are not exposed to falls of material associated with sub-level open stoping and other such areas of risk. Equipment is knowingly sent into areas where the rilling of material is expected. This is an operational risk, not a safety risk and notification does not add value to the industry or Regulator.

Clause 136 Statutory Functions Industry has repeatedly brought up the issue of an exemption process to allow short term appointment of people with appropriate skills but without the required qualifications. This may be required for a number of reasons including:

- waiting for ratification of qualifications
- unexpected short-term absences
- lack of depth in small operations

The PCBU always retains the obligation to provide a safe workplace and the responsibility and accountability for ensuring that any person fulfilling the duties of a statutory function has suitable skills and abilities and oversight. The current inflexibility is detrimental to the industry and is not warranted

136 (3) states that a position can only be held by someone that meets the Schedule 10 requirements (wherein it requires the position holder to have a Practising Certificate). Either Clause 136 should be amended to include (6) An exemption from the requirements (3) may be granted for a limited period at the discretion of the Regulator OR the clauses in Schedule 10 individually changed to allow the same outcome, for instance to:

> Schedule 10 Clause26 Underground mine supervisor
>
> (1) The statutory function of underground mine supervisor is to supervise mining operations at the mine for a shift during which production is taking place.

(2) The requirement for nomination to exercise the statutory function is that the individual nominated must hold a current practising certificate that authorises the exercise of the statutory function.

Should be added

(3) An exemption to the requirements of (2)) may be granted for a limited period at the discretion of the Resource Regulator

Clause 160 The NSW Minerals Council is not the only prominent industry body and does not necessarily adequately represent the industry, particularly metals and exploration. Just as union representation is open to the two prominent representative unions, it is suggested that the Association of Mining and Exploration Companies (AMEC) is represented on the MSAC. If this is considered problematic on the basis of increased numbers (though I question why increasing numbers on the basis of better understanding and represention would not be sought) then perhaps a single Mineral Council representative could represent both coal and metals to allow an AMEC representative to be included within the currently legislated numbers.

Clause 160 (4) does not appear to be appropriate to the 'advisory' nature of MSAC – numbers should be based on obtaining broad representation not on a presumed industry versus union numbers count

Further note – there appears no onus for the industry representatives to broadly consult with their constituency. See comments above in comments relating to the Act

Clause 164 There are similar issues to those noted regarding Clause 160 with inadequate representation of industry needs and concerns. Furthermore when industry concerns are raised there is often appears no transparency or justification for the decisions made despite adverse effects on industry productivity and costs. It is accepted that decisions need to balance broader needs than just industry however industry bears almost all the burdens so it is unreasonable that there is no onus to demonstrate the broader benefits.

Clause 185 The 12 month time period makes no sense. Where there is a justification for an exemption it should be evidence based and address merit and risk. Provided it does this there is no justification for mandating a limited timeframe. In the event that an exemption is granted to simply to allow time to meet compliance, that is a subset of exemptions and may well justify a defined period but this is not precluded and should still be based on evidence and risk.

Schedule 3 Part4 A mine opening like any mining operation comes with an obligation on the PCBU to assess risk, design appropriately and execute safely. On what basis has this been catergorised as a

high risk activity when it and other mining operations are controlled by the body of the Regulation. Rurther, on what basis is a 3 month waiting period justified?

Schedule 4 Clause 3(d) should be modified so as not to preclude oxygen candles in a refuge chamber. Suggest (d) read “in a refuge chamber at an underground mine during an emergency however this shall not be taken to apply to safety devices such as oxygen candles or the like specifically included in the equipment schedule of the refuge chamber by the manufacturer or following an appropriate risk assessment”

General

Currently officials refuse to be tested for alcohol and refuse to undertake site visitor induction on the basis that this is Resource Regulator policy. Suggest that legislation require Inspectors and representative of the Regulator to follow all policies and safety requirements of the PCBU other than such that it may interfere with the conduct of the Inspector’s business and the Inspector’s rights, responsibilities and duties under legislation.