

Feedback Form

* Required field

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Organisation

Are you an individual representing at organisation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide the organisations' name:	Ulan West Operations

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<input checked="" type="checkbox"/> I consent to my submission being published, including my identity.	
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Please provide a valid reason/s for the request to exclude identity:	Not Applicable

National context

DO YOU HAVE ANY COMMENTS REGARDING THE WHS (MPS) LAWS AND THEIR NATIONAL CONTEXT? SEE QUESTIONS BELOW

PLEASE CLARIFY YOUR RESPONSE AND GIVE REASONS FOR YOUR VIEW.

<p>1. Do the WHS (MPS) laws remain consistent with the National Mine Safety Framework principles?</p>	<p>Generally yes.</p> <p>In terms of interstate consistency (legislation) and cooperation, the question to be answered is, has the progress intended over the past 5 years that the NSW WHSMPS legislation has been in place, been achieved?</p>
<p>2. Is the objective of seeking national consistency relating to WHS in relation to mines and petroleum sites still valid?</p>	<p>Yes.</p> <p>The industry is the same in terms of operation and hazards, so legislation should be consistent.</p>
<p>3. Has the WHS (MPS) framework facilitated effective interstate regulatory cooperation?</p>	<p>No comment - not close enough to the mechanisms behind this.</p> <p>The fact that there are differences in legislation and harmonisation did not reach agreement, this could be questioned.</p>
<p>4. Are there any developments in mine and petroleum safety laws in the major mining states that could improve safety regulation and outcomes in NSW?</p>	<p>Not aware of any in particular.</p> <p>Evidence exists where an industry hazard raises as a priority in a state then this is communicated and acted upon effectively in other states e.g. airborne dust exposure.</p>

WHS (MPS) Act

**DO YOU HAVE ANY COMMENTS REGARDING THE WHS (MPS) ACT? SEE QUESTIONS BELOW
PLEASE CLARIFY YOUR RESPONSE AND GIVE REASONS FOR YOUR VIEW.**

<p>5. Are the objects of the WHS (MPS) Act still valid, appropriate and working as intended? (Part 1 of Act)</p>	<p>In most cases, yes.</p> <p>The objects are applied uniformly to all coal mines irrespective of a mine's specific risk profile, the consequence of which is an overly high regulatory burden on mines that are lower in risk profile or where a major hazard does not exist.</p> <p>An example of this is the western coalfields of NSW where methane gas is not present.</p>
<p>6. Are there any areas arising from application of the WHS (MPS) laws that have had unintended outcomes? (Part 1 of Act)</p>	<p>Yes.</p> <p>WHS(MPS) laws include both the Act and Regulations.</p> <p>As per Q.5. above, where a risk is not in existence at a coal mine, a mechanism within the laws should allow relief from at least some, if not all, of the regulatory controls applying to that risk.</p> <p>Refer below to Q.17 for a specific example in the Regulations.</p>
<p>7. Are the provisions under the WHS (MPS) laws for incident notification still valid, appropriate and working as intended? (Part 3 of the Act)</p>	<p>Yes.</p> <p>Comment:</p> <p>Mines should have a system in place for the classification of incidents according to risk so as to objectively determine whether they are notifiable or not.</p>
<p>8. Are the provisions for functions of government officials still valid, appropriate and working as intended? (Part 4 of the Act)</p>	<p>Generally, yes.</p> <p>There is an inconsistency here where government officials from the Regulator do not follow site procedures such as site access and log on protocols. A reasonable expectation would be that the Regulator, who is the agency to enforce compliance with safety and health law in NSW, would be active in demonstrating by example to all, their commitment to health and safety in the industry.</p> <p>If this is exercising clause 26 (refer below) of the Act then it does not promote the best health and safety outcome for the industry.</p>

	<p>"26 Government officials subject to regulator's direction</p> <p>(1) A government official is subject to the regulator's directions in the exercise of the government official's compliance powers.</p> <p>(2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.</p>
9. Are the provisions for worker representation in coal mines still valid, appropriate and working as intended? (Part 5 of the Act)	Yes.
10. Are the provisions for enforcement measures still valid, appropriate and working as intended? (Part 6 of the Act)	<p>Yes.</p> <p>While the provisions are valid, the application of the provisions appears to be mainly focussed on measures (improvement and prohibition notices) that can be enforced with little discretion applied to the extent or scale of issue identified.</p> <p>A positive outcome is the NSW Resources Regulator's compliance and enforcement approach has been consistent for a number of years now in administering the WHS laws in the industry.</p>
11. Are the provisions for a Board of Inquiry still valid, appropriate and working as intended? (Part 7 of the Act)	Yes
12. Are the provisions for statutory bodies still valid, appropriate and working as intended? (Part 8 of the Act)	Yes
13. Do the provisions for statutory bodies ensure adequate representation in the provision of advice in relation to health and safety and competence? (Part 8 of the Act)	Yes

WHS (MPS) Regulation

**DO YOU HAVE ANY COMMENTS REGARDING THE WHS (MPS) REGULATION? SEE QUESTIONS BELOW
PLEASE CLARIFY YOUR RESPONSE AND GIVE REASONS FOR YOUR VIEW.**

<p>14. Are the provisions for nomination and appointment of operators still valid, appropriate and working as intended? (Part 1A of the Regulation)</p>	<p>Yes</p>
<p>15. Are the provisions for managing risk in addition to the WHS Regulation still valid, appropriate and working as intended? (Part 2, Div 1, Subdivision 1 of the Regulation)</p>	<p>Yes</p>
<p>16. Are the provisions for SMS, including PHMP & PCP, still valid, appropriate and working as intended? (Part 2, Div 1, Subdiv 2-4 and Div 2 and 3 of the Regulation)</p>	<p>Yes</p>
<p>17. Are the provisions for specific control measures still valid, appropriate and working as intended? (Part 2, Div 4-5 of the Regulation)</p>	<p>No. Refer the points below.</p> <p>1. Reference the definition of a return (clause 65(6)) as "roadways used for the removal of air and airborne contaminants from mine workings". This is the only definition of the return in the Regulations and is irrespective of level of contaminant.</p> <p>Further, reference the guidance on airborne contaminants on the Regulator's website which is "An airborne contaminant is a fume, mist, gas, vapour, dust or other microorganism that is a potentially harmful substance to which individuals may be exposed in their working environment." It is reasonable to consider that an airborne contaminant is potentially harmful when workplace exposure limits are exceeded.</p> <p>The definition of a return and what is enforced by the Regulator, is further extended by interpretation in the Regulator's guide "Underground coal mines – identification of returns and hazardous zones" (January 2015) " in which "A return is an airway that carries air from the mine". This interpretation is not consistent with</p>

the definition of a return in the Regulations (not referring to airborne contaminants specifically) nor with the guidance on the Regulator's website as to what "airborne contaminants" refers to.

The definition of a return is then interpreted in the Regulator's guide to include longwall homotropical conveyor roadways in a general manner without consideration of management of risk or arrangement of these homotropical conveyor roadways, again not consistent with the reference to "airborne contaminants" on the Regulators website.

This provides an unintended outcome where a longwall homotropical conveyor roadway splits from the adjacent intake roadway outbye of the longwall hazardous zone. Irrespective that the airborne contaminants are well below safe and legislated limits. The roadway is considered a return and thus a hazardous zone. The intent here is for the homotropical conveyor roadway to provide intake air along the roadway to ventilate specific points and it should remain intake air to that point until contaminated (where airborne contaminants exceed workplace exposure limits).

This classification restricts the type of plant that can operate in the roadway and, without such plant, prevents the roadway being made homotropical. The safety benefits of the roadway, particularly the removal of heat, are then not able to be realised.

The contention here is that a longwall homotropical conveyor roadway as described above should not be considered a return and thus a hazardous zone. The roadway does not have a direct connection (airway) to the working longwall face, does not service the working longwall face ventilation wise as the panel return on the tailgate side of the longwall face does and does not contain airborne contaminants to the extent of the Regulator's definition being "An airborne contaminant is a fume, mist, gas, vapour, dust or other microorganism that is a potentially harmful substance to which individuals may be exposed in their working environment."

A specific exclusion of longwall homotropical conveyor roadways or further detail in the definition of a return should be considered in the legislation review.

2. A number of clauses (78, 80 and 82) refer to plant in a hazardous zone. While clarification has been provided in the Regulator's guide "Underground coal mines – identification of returns and hazardous zones" (January 2015), the definition of hazardous zone is inconsistent in its treatment of standing faces.

As per "3 Definitions.....hazardous zone, at an underground coal mine, means each of the following:

(c) any part of an intake airway that is on the return side of such points that are within 100metres outbye of:

(ii) any longwall or shortwall face, but only to the extent that the intake airway is on the intake side of that face (but not if the longwall face is an installation face at which the development of the face, and mining for development coal, have been completed and at which longwall mining has yet to commence)".

Sub-clause (c)(ii) specifically excludes a longwall installation face that is standing i.e. development is complete. The case of a standing face also occurs regularly in development panels at underground coal mines, particularly in main heading panels where faces could stand for months or years while extraction panels are driven off those headings.

Consideration for standing development panels to be excluded from the definition of hazardous zones should be given in this legislation review. This could be by way of a similar statement made for hazardous zones definition clause 3 (1)(c)(ii) included also in (c)(i) such as "but not if development in a part of a mine has been completed and further mining for development coal has not commenced".

3. Clause 96 requires an underground mine to have at least 2 exits to the surface as per "96 Emergency exits (1) The mine operator of an underground mine must ensure that all parts of the mine have at least 2 exits to the surface that are trafficable by persons and that comply with subclauses (2) and (3).

(2) Each exit must: (a) be accessible from each level at the mine in which coal extraction or stoping operations are being carried out, and (b) allow for the passage of rescue

persons and rescue equipment, and (c) be marked or signposted so that it can be readily located in an emergency, and (d) be maintained so that it remains effective.

(3)

(4) The mine operator of a mine is not required to comply with subclause (1) in either of the following circumstances if the mine operator ensures that the mine has at least one trafficable exit to the surface that complies with subclause (2): (a) a single entry drive or shaft is being developed, (b) the most distant area of the mine is no more than 250 metres from the mine entrance or a second exit."

This is not able to be complied with in some circumstances in underground coal mines such as (i) a longwall face greater than 250 metres in length and where no take-off chutes are driven and the longwall equipment is being removed. At some point during shield removal the face length is greater than 250 metres and there are not two exits available, and (ii) the adjacent travel road inbye of the longwall production face that is not connected to the adjacent gate-road. When longwall retreat exceeds 250 metres this roadway does not have two available exits.

Both cases above are not covered by the provisions of the Regulations requiring an exemption to be sought.

Consideration of the above examples as a high risk activity in Schedule 3 should be made in this legislation review. A high risk activity for these would eliminate the need to apply for an exemption. The Regulator's position on exemptions is well known and that is, as far as is practicable, not to grant them.

4. Clause 34 Prohibited items and substances references Schedule 4 in the Regulations.

Schedule 4 sub-clause 5(1)(2) and 5(1)(3) are as follows "5 Explosives (2) Explosives testing equipment or exploders must not be stored at an underground coal mine." and "(3) The batteries of explosives testing equipment or exploders must not be changed while at an underground coal mine."

These two sub-clauses do not work as intended in respect of the wording "at an underground coal mine". The intention here when drafted is expected to have been that

	<p>these prohibitions apply while "underground at an underground coal mine"</p> <p>A correction or change should be considered here as part of the legislation review as currently this equipment is stored at underground coal mines.</p>
18. Are the provisions for emergency management still valid, appropriate and working as intended? (Part 2, Div 6 of the Regulation)	Yes
19. Are the provisions for information, instruction and training still valid, appropriate and working as intended? (Part 2, Div 7 of the Regulation)	Yes
20. Are the provisions for health monitoring still valid, appropriate and working as intended? (Part 3 of the Regulation)	Yes
21. Are the provisions for consultation and worker safety role still valid, appropriate and working as intended? (Part 4 of the Regulation)	Yes
22. Are the provisions for survey plans and mine plans still valid, appropriate and working as intended? (Part 5 of the Regulation)	Yes
23. Are the provisions for notifications and information to be provided to the regulator and information to be kept by the operator still valid, appropriate and working as intended? (Part 6 and Part 7 of the Regulation)	Yes
24. Are provisions for statutory functions still valid, appropriate and working as intended? (Part 8 of the Regulation)	<p>Generally, yes.</p> <p>Specifically in the case of "Qualified mechanical tradesperson" Schedule 10 Clause 15, the requirements under sub-clause (2) " (a) have a proficiency</p>

	<p>certificate (issued by State Training Services) in a mechanical trade, or (b) ..., or (c) have a qualification that the regulator has declared, by notice published in the Gazette, to be a qualification equivalent to a qualification referred to in paragraph (a)....." are too specific to the point of being inflexible.</p> <p>The State Training qualification for a Mechanical Tradesperson is MEM30205 and any mechanical trade with the core subjects can attain this qualification, yet not have the skills for an underground coal mine appointment as a mechanical tradesperson. To date sub-clause (2)(c) has never been exercised i.e. an equivalent qualification has not been gazetted.</p> <p>This particular clause is not working as intended.</p> <p>The 2020 legislation review could consider allowing alternative trades with qualifications more suited to the mining industry under 15(2)(a) such as "AUR31116 Certificate III in Heavy Commercial Vehicle Mechanical Technology".</p> <p>Refer Training NSW " Smart and Skilled NSW Skills List – v10.2 "</p>
<p>25. Are provisions for licensed activities and registration of plant still valid, appropriate and working as intended? (Part 9 and cl 177 of the Regulation)</p>	<p>Yes</p>

Submitting the form

Please return your form via:

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

Post: Statutory review of WHS (MPS) laws 2020
NSW Resources Regulator – Regulation Development
PO Box 344
Hunter Regional Mail Centre 2310 NSW

By the closing date: 17 April 2020

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