

To: **NSW RESOURCES REGULATOR**

Re: **STATUTORY REVIEW OF THE WORK HEALTH AND SAFETY
(MINES AND PETROLEUM SITES) ACT 2013 AND REGULATION**

1 MAY 2020

Introduction

The Association of Mining and Exploration Companies (AMEC) welcomes the opportunity to provide a submission to the NSW Resources Regulator on the Statutory Review (Review) of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (Act) and *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (Regulation).

About AMEC

AMEC is a leading national industry body representing over 275 mining and mineral exploration companies across Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses working in and for the minerals industry. AMEC represents a number of companies exploring, mining and investing in NSW. AMEC does not represent the petroleum sector.

Work, health and safety must always come first for the minerals industry

Work, health and safety is and should always be the top priority for the minerals industry. NSW has a wide breadth of minerals operations from a one-person exploration site to the complex deep underground coal and metalliferous mines that are all covered by the current Work Health and Safety (WHS) Act and Regulation. It is timely to review this legislative framework and provide comment on whether the provisions are still valid, appropriate and working as intended. It is also important to note that the comments provided by industry come from practical experience of the working of the legislative framework and deserve due consideration by Government to ensure that the legislation is fit for purpose.

Opportunity to improve WHS framework

AMEC provides the following overarching comments on the NSW WHS legislative framework:

1. **Support national harmonised legislation** - AMEC supports harmonised WHS legislation and regulation across all Australian jurisdictions. This is important to many of our members who have sites, staff and projects that transverse different jurisdictions. We encourage NSW to continue to review the legislative framework in other jurisdictions and align wherever possible.
2. **Ensure the legislation and regulation is fit for purpose** – Legislation and requirements must align with the risks and be fit for purpose for the different minerals industry operations around NSW. A legislative framework for a large underground coal mine does not always align with the risks or requirements for an

open cut metalliferous mine or one-person temporary exploration site. Onerous and unnecessary requirements add time and money to any operation. This is especially important for small exploration companies with limited staff and income only from capital raising - every dollar and hour counts. The legislative framework must be fit for purpose, risk based and practical. Examples of where the legislation and regulation should be amended are noted below in answer to the questions posed in the Review Discussion Paper.

3. **Broaden representation in the NSW Mine Safety Advisory Council and Mining and Petroleum Competence Board to include AMEC** – The NSW Mines Safety Council provides a critical function with strategic advice to the Minister to improve WHS in the minerals industry but does not include representation from smaller metalliferous operators and the exploration sector, with the only industry representatives from the NSW Minerals Council. Similarly, the Mining and Petroleum Competence Board determines competence standards for safety-critical roles and provides advice. As a leading national industry body representing over 275 mining and mineral exploration companies across Australia and with most of our members from the exploration and metalliferous sector, AMEC offers to provide representation to the NSW Mine Safety Advisory Council and Mining and Petroleum Competence Board to both broaden the industry input as well as provide a national perspective.
4. **Consistency in duty requirements** – As noted above in incident notification, some duties in the legislative framework are absolute and other include ‘as soon as reasonably practicable’. AMEC supports adding this statement for all duties under the Act and Regulation to provide consistency and clarity.
5. **Minimise prescription and allow for practical solutions** – Codes and Australian Standards are useful guidelines but are not always drafted so that they are applicable for the specific circumstances related to the minerals industry. References to these documents in the Act and Regulation should be for guidance only and not mandatory. An example is noted below in question 17 related to the Australian Standard for explosives.
6. **Maintain current statutory roles only** – AMEC understands that a statutory role for mechanical engineering is proposed as an additional role for metalliferous mines in NSW. These roles are not always required at mine sites depending on the size and structure of sites and so AMEC supports maintaining the current statutory roles only.
7. **Retain existing industrial manslaughter provisions** – AMEC supports the current provisions regarding industrial manslaughter and does not support extension or separation of these requirements in legislative reform.

AMEC provides the following responses to the specific questions raised in the Discussion Paper for the Review:

Q1. Do the WHS (MPS) laws remain consistent with the National Mine Safety Framework principles?

AMEC agrees that the NSW WHS legislative framework remains consistent with the National Framework and encourages the NSW Government to continue to align with other jurisdictions and maximise consistency where possible, as noted above.

Q2. Is the objective of seeking national consistency relating to WHS in relation to mines and petroleum sites still valid?

AMEC supports national consistency relating to WHS wherever possible to minimise confusion and simplify the operations for the many companies with staff and projects in multiple Australian jurisdictions.

Q3. Has the WHS (MPS) framework facilitated effective interstate regulatory co-operation?

AMEC understands that the WHS framework has facilitated effective interstate regulatory co-operation and encourages NSW Government to continue to lead and facilitate this process to maximise consistency across jurisdictions.

Q4. Are there any developments in mine and petroleum safety laws in the major mining states that could improve safety regulation and outcomes in NSW?

AMEC recommendations for the mining sector are detailed above and below, with no comment regarding the petroleum legislation as AMEC does not represent the petroleum sector.

Q5. Are the objects of the WHS (MPS) Act still valid, appropriate and working as intended? (Part 1 of Act)

The objects of the WHS framework broadly continues to remain valid but AMEC provides comments on specific areas for improvements as detailed in other questions below.

Q6. Are there any areas arising from application of the WHS (MPS) laws that have had unintended outcomes? (Part 1 of Act)

See below for detail on unintended outcomes from the specific sections of the legislative framework.

Q7. Are the provisions under the WHS (MPS) laws for incident notification still valid, appropriate and working as intended? (Part 3 of the Act)

The WHS Act (Clause 15(1)) requires that *'A mine operator of a mine must ensure that the regulator is notified immediately after becoming aware that a notifiable incident...has occurred'*. In an emergency there often higher priorities (such as safeguarding life) than making 'immediate' contact with the Resource Regulator but a literal interpretation of the Act can (and has) been undertaken. We understand and endorse the need for prompt notification, but AMEC recommends that the word 'immediate' should be changed to 'as soon as reasonably practicable' given the nature of the event and hierarchy of needs during incidents. This should be replicated for other duties in the legislative framework to provide consistency and clarity.

Further clarity on when incident notification is required should also be provided either in the regulatory framework or through policy or guidance material from the NSW Resources Regulator as we understand there is some confusion within the industry.

Q8. Are the provisions functions of government officials still valid, appropriate and working as intended? (Part 4 of the Act)

AMEC provides no specific comments at this time.

Q9. Are the provisions for worker representation in coal mines still valid, appropriate and working as intended? (Part 5 of the Act)

No comment as AMEC does not represent coal operators in NSW.

Q10. Are the provisions for enforcement measures still valid, appropriate and working as intended? (Part 6 of the Act)

Enforcement measures are a necessary part of any compliance legislation. The Improvement and Prohibition Notices (Section 49 and 50 of the Act) are enforcement measures that provide an important safeguard for workers. However, clarity needs to be improved on what constitutes a breach to provide guidance for industry as well as support consistency and transparency. Further, AMEC recommends that a dispute resolution process is included in this Act to provide equity for all parties.

Q11. Are the provisions for a Board of Inquiry still valid, appropriate and working as intended? (Part 7 of the Act)

The Board of Inquiry is untested, but its operations and terms of reference must align with other similar inquiries should it be required in the future.

Q12. Are the provisions for statutory bodies still valid, appropriate and working as intended? (Part 8 of the Act)

As above, the NSW Mines Safety Advisory Council provides a critical function with strategic advice to the Minister to improve WHS in the minerals industry but does not include representation from smaller metalliferous operators and the exploration sector, with the only industry representatives from the NSW Minerals Council. Similarly, the Mining and Petroleum Competence Board determines competence standards for safety-critical roles and provides advice. As a leading national industry body representing over 275 mining and mineral exploration companies across Australia and with most of our members from the exploration and metalliferous sector, AMEC offers to provide representation to the NSW Mine Safety Advisory Council and Mining and Petroleum Competence Board to both broaden the industry input as well as provide a national perspective.

Further, AMEC understands that the operations of these statutory bodies could be improved to include consideration of a broader range of matters and in depth at meetings as well as greater transparency of outcomes. This could be achieved through the release of an agenda and call for comments prior to meetings and a release of the recommendations for comment after the meetings.

Q13. 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) WHS (MPS) Regulation

Note detail in answer to question 12 above on this issue.

Q14. Are the provisions for nomination and appointment of operators still valid, appropriate and working as intended? (Part 1A of the Regulation)

To align with contemporary work practises, the appointment of a Mine Operator and notifications to the Regulator (Clause 6 and 7 of the Regulation) should include digital and/or online provisions for notification.

Q15. 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)

AMEC provides no specific comments at this time.

Q16. 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)

AMEC re-iterates the importance for all plans and management systems to be fit for purpose and align with the risks for each type of minerals operation.

Q17. Are the provisions specific control measures still valid, appropriate and working as intended? (Part 2, Div 4-5 of the Regulation)

AMEC understands that miscommunication and issues between operators and other persons conducting a business or undertaking (PCBU), especially contractors has been an important factor in recent incidents in the minerals industry. This section of the Regulation could be improved as follows:

- **Exemptions for low risk activities** - The requirements in Subdivision 4 of the Regulation do not always align with contractors undertaking work in lower risk activities and/or on low risk sites. Clause 19 (b) includes some low risk activities but excludes some obvious activities that should be included in the exemptions. As an example, a mine waste collector undertakes similar activities to a delivery contractor, however, does not have the same exemption. This clause provides no avenue for the PCBU to use a risk-based approach to assess reasonable exemptions. Further, the legislative framework also provides little clarity when contractor labour hire employees act indistinguishably from an employee of the mine. AMEC recommends that Clause 19(b) adds subclause:
 - (v) *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;*
 - (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.*
- **Communication between shifts** – Communication between shifts is a particularly important matter and one that has recently led to a near-tragic incident. Clause 27 of the Regulation has a clear intention but is not practical to implement. The Regulation 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 practice, the incoming supervisor receives the report from the outgoing supervisor and acknowledges that they have received this in writing. It is then the incoming supervisor’s responsibility to provide relevant information to the incoming crew – but this cannot usually be formally communicated back to the outgoing supervisor (who would have usually left site). AMEC recommends that Clause 27 (d) is deleted as Clause 27 (c) legally obliges the incoming supervisor to pass on the information.
- **Dealings with explosives** – Clause 31 (2)(b) of the Regulation 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*. AS 2187 is, for the most part, very applicable for the minerals industry, however transport requirements are written around transport on public roads and do not recognise the controls associated with mining sites. AMEC recommends that this clause is amended to *‘and Australian Standard AS 2187 Explosives – Storage, transport and use or otherwise demonstrated to provide an equivalent or greater level of safety through a formal risk assessment process’*.

- **Ground support requirements** - Clause 52(c) of the Regulation has a clear intention but is impractical to implement. Ground support requirements are provided to protect operators installing support and supervisors. The plans for the ground support are more practically provided to the workers responsible and the required display of plans adds little value. AMEC recommends that Clause 52(c) is amended to *'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'*.
- **Exhaust emissions and fuel standards** – The exhaust emissions and fuel standards detailed in Clause 53 1(b) and (c) of the Regulation 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 underground environment. Provided that the mine is effectively managing diesel emission to comply with legislated limits and therefore worker exposure and risk is acceptable, detailing how this is done should not be prescribed within the Act. AMEC recommends deleting Clause 53 1(b) and (c) of the Regulation to simplify the legislation and avoid duplication and confusion.
- **Ventilation systems** - Clause 59(3) of the Regulation that stipulates the provision of ventilation of one cubic metre of air per second is another example of a prescriptive requirement that is not linked to the legislated exposure limits. This does, however, provide a level of protection for anomalous conditions that may not be shown by 'spot' monitoring. AMEC recommends that this subclause is amended to *'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*
 - a) *continually monitored*
 - b) *remains within prescribed limits*
 - c) *there is an automated alarm that warns workers in the event to leave the area after prescribed limits are exceeded.'*

**Q18. Are the provisions for emergency management still valid, appropriate and working as intended?
(Part 2, Div 6 of the Regulation)**

Emergency management often means the difference between life and death. The following are important components of the Regulation that could be improved:

- **Preparation of emergency plans** – The interpretation of Clause 88 (2)(i) and (ii) must provide for different types of mine sites. Radio communication remains the industry norm for smaller mines to enable the prompt location of all persons and the shift supervisor has knowledge of the location of the persons. Larger mines may have a designated control room and even real time tracking whereas for an exploration site mobile telephones may be more practical.
- **Refuge chambers or safe places of refuge** - Clause 97 (7) (a) to (g) of the Regulation reference 'refuge chamber' rather than a 'safe place of refuge'. For exploration sites a specific location could be used and in underground 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. AMEC recommends that references to 'refuge chamber' should be replaced with 'safe place of refuge'.
- **Self-rescuer training** – The training for the use a self-rescuer in a 'simulated work environment' has been a laudable improvement to the regulation and is well supported by industry. Clause 100 (3)(b) that necessitates self-rescuer training every six months in a 'simulated work environment' is, however, time consuming, costly and takes valuable resources away from other important safety initiatives without a

demonstrated benefit. AMEC understands that this was raised as a concern in the original Regulation consultation. AMEC recommends that a six monthly refresher training in the form of information and demonstration of use would be more practical, especially in consideration of communicable diseases including COVID-19 as sharing of self-rescuer demonstrators (even sterilised after each use) adds to risk and worker concern.

- **Competent persons at surface for power switch off** – For metalliferous mines, Clause 102 (d) for power shutdowns is not practical. Emergency Plans should include this requirement and generally in practice in underground metalliferous mines 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. AMEC recommends that this Clause is deleted or amended to *‘a competent 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’*.

Q19. Are the provisions for information, instruction and training still valid, appropriate and working as intended? (Part 2, Div 7 of the Regulation)

AMEC provides no specific comments at this time.

Q20. Are the provisions for health monitoring still valid, appropriate and working as intended? (Part 3 of the Regulation)

With the growing acknowledgement of the importance of mental health, AMEC recommends that Part 3 of the Regulation supports industry to invest, support and monitor worker mental health.

Q21. Are the provisions for consultation and worker safety role still valid, appropriate and working as intended? (Part 4 of the Regulation)

AMEC provides no specific comments at this time.

Q22. Are the provisions for survey plans and mine plans still valid, appropriate and working as intended? (Part 5 of the Regulation)

AMEC provides no specific comments at this time.

Q23. 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)

The burial of un-manned equipment is an operational risk, not a safety risk and notification should not be required to the Regulator, as stipulated in Clause 128(5)(e) of the Regulation. There appears no justification for making burial of 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 stopping and other such areas of risk. AMEC recommends that Clause 128(5)(e) of the Regulation is deleted.

Q24. Are provisions for statutory functions still valid, appropriate and working as intended? (Part 8 of the Regulation)

Statutory roles (Clause 136) can be difficult to maintain, especially at smaller, isolated sites in the metalliferous industry. Often there are limited personnel who can fulfil these requirements and for small companies and sites, if key staff are on leave, especially at short notice, this can create issues. AMEC recommends that an

exemption to the requirements of Clause 136 (2) may be granted for a limited period at the discretion of the Regulator.

Q25. Are provisions for licensed activities and registration of plant still valid, appropriate and working as intended? (Part 9 and cl 177 of the Regulation)

AMEC provides no specific comments at this time.

Further comments for other sections/clauses in the legislative framework

AMEC provides additional comments on section of the Act and clauses of the Regulation that have not been covered in the questions above:

- **Exemptions granted by the Regulator** – An exemption from a provision in the Regulation could be needed for a specific exceptional circumstance and should be evidence based and address merit and risk. The 12 month time period provided in Clause 185(4) of the Regulation seems to be a transitional provision but should be maintained for exceptional circumstances. AMEC recommends that Clause 185 (4) is removed.
- **Development of new mine entry** - A mine opening like any mining operation comes with an obligation on the PCBU to assess risk, manage and execute safely. The three month waiting period and classification of a new mine entry as a 'high risk activity' is not therefore needed and AMEC recommends removal of Part 2(4) of Schedule 3 of the Regulation.
- **Ignition sources should preclude oxygen candles in a refuge chamber** - Schedule 4 Clause 3(d) should be modified so as not to preclude oxygen candles in a refuge chamber. AMEC recommends that Schedule 4 Clause 3(d) is amended to '*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*'.
- **Requirement for alcohol testing and site induction for all visitors** – AMEC understands that officials refuse to be tested for alcohol and undertake site visitor induction on the basis that this is Resource Regulator policy. Testing and induction is critical for all visitors to site and legislation should stipulate this for all Inspectors as well as representatives of the Regulator and Government staff.

The minerals industry looks forward to the outcome of this Review and improvements to the NSW WHS framework. AMEC would welcome further consultation on this important matter and if you have any queries regarding this submission, please do not hesitate to contact:

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