



PUBLIC CONSULTATION FORM

Discussion Paper WHS (MPS) Laws amendments

April 2021

WHS (MPS) Laws amendments

The NSW Resources Regulator is seeking submissions on the **Discussion paper** on proposed amendments to the *Work Health and Safety Mines and Petroleum Sites Act 2013* and its Regulation.

How to make a submission

You can send questions about the reforms or the submission process to rr.feedback@planning.nsw.gov.au

To make a submission, use this form to comment on the Discussion paper on proposed amendments to the WHS (MPS) Laws and return to:

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

Post: WHS (MPS) Laws amendments
NSW Resources Regulator
Regulatory Programs
PO Box 344 Hunter Regional Mail Centre 2310 NSW

By the closing date: 17 May 2021

As part of our public consultation processes, we will publish copies of all submissions on our website at the conclusion of the consultation period. Publishing all public submissions received will ensure transparency around the feedback. As a general rule, all public submissions will be published in full (excluding contact details). In exceptional circumstances, we may consider withholding the identity of a submitter when publishing their submission (i.e. if there are legitimate concerns around personal security/safety). Please advise us if you want your identify withheld, including the reasons. Your submission will be managed and retained in accordance with the *State Records Act 1998* and the *Government Information (Public Access) Act 2009*.

Feedback Form

* Required field

Contact details

Name*		[REDACTED]			
Email address*		[REDACTED]			
Street address		[REDACTED]			
Suburb	Granville	State	NSW	Postcode	2142
Postal address (if different from above)		PO Box 20			
Suburb	Granville	State	NSW	Postcode	2142

Organisation

Are you an individual representing at organisation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, please provide the organisation's name:	The Australian Workers' Union	

Privacy

<input checked="" type="checkbox"/> * In making this submission I acknowledge the submission will be published by the Resources Regulator, including my identity.	
(If applicable) I provide the following reason/s to request my identity be excluded when the submission is published:	

Feedback

DO YOU HAVE ANY COMMENTS ON THE QUESTIONS BELOW?	
<p>(i) Should there be two types of investigations contained in the WHS (MPS) Act?</p>	<p>Yes, the AWU supports the proposal.</p>
<p>(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?</p>	<p>a. The AWU supports the expansion of the provisions of ‘causal’ investigation and that any persons named in such investigations have provisional protections from having such evidence used against them.</p> <p>b. However, provisional protections should be further defined and limited to ensure that should any subsequent investigations by the regulator determine that a breach consistent with section 31(1)(c) Amendment of Work Health and Safety Act 2011 No 10 has occurred, that is;</p> <p style="padding-left: 40px;">(c) the person—</p> <p style="padding-left: 80px;">(i). engages in the conduct with gross negligence, or</p> <p style="padding-left: 80px;">(ii). is reckless as to the risk to an individual of death or serious injury</p> <p style="padding-left: 80px;">(iii). or illness.</p> <p>that the regulator is unhindered to prosecute those suspected of the above offences.</p> <p>d. The AWU supports the proposal that Industry Investigations conducted to establish causality and future safety improvements should be more professional and consistent and provided to the regulator in a timely fashion, however, such causal investigation should not detract from the role and obligation of the regulator to conduct and concurrent or subsequent investigation for the purposes of enforcement.</p>
<p>(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</p>	<p>a. The AWU supports the proposal that the function of mine SHRs be expanded beyond the functions under the WHS Act and previous mine safety legislation to enable them to participate in investigations.</p>

	<p>there any limitations that may be warranted on its exercise?</p>	<p>b. The AWU further support that such powers and functions not be exercised to unreasonably hinder, obstruct or disrupt work.</p>
<p>(iv) Do you have any concerns regarding the adoption of the amendments for appointment of industry SHRs by the Minister?</p>		<p>The AWU does not oppose these amendments.</p>
<p>(v) Do you agree with extending industry SHRs to mines other than coal mines?</p>		<p>The AWU supports the proposal to extend Industry SHRs to mines other than coal mines.</p> <p>a. The AWU propose that in conjunction with the application of this recommendation section 28(2)(b) of the Act be extended to include the AWU as the union entitled to nominate Industry HSRs in mines other than coal mines.</p> <p>b. Unions including the AWU that represent mine workers remain the appropriate body to nominate Industry SHRs.</p> <p>c. This amendment is consistent with, and would support, the primary purpose of the Industry SHRs is to ensure that mine workers had a direct voice and advocate in the role of mine health and safety in accordance with established tripartite collaboration principles.</p> <p>Please see attached copy of the AWU's submission to the Independent Review conducted by Mr Kym Bills, along with an independent research report conducted into the benefits of the Industry SHR scheme in Queensland by academics at universities in Australia and the United Kingdom (commissioned by the CFMMEU).</p>
<p>(vi) Should the WHS (MPS) Act be amended to include provisions equivalent to sections 146 and 148 of the WHS Act?</p>		<p>The AWU supports the proposed amendment.</p>
<p>(vii) Should the WHS (MPS) Act be amended to amend the purpose statement for</p>		<p>The AWU supports the proposed amendment.</p>

	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?	
(viii)	Should the WHS (MPS) Regulation be amended to clarify that the MPCB can appoint a person as an assessor?	The AWU supports the proposed amendment.
(ix)	Is clarification required in relation to rock and coal bursts and related pressure bursts being a principal mining hazard?	
(x)	Are there any elements of the Global Industry Standards on Tailings Management that should be prescribed in the WHS (MPS) Regulation?	
(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?	The AWU supports the proposed amendment.
(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?	The AWU supports the proposed amendment.

<p>(xiii) Should the WHS (MPS) Regulation be amended to provide certain exemptions for small quarries?</p>	<p>The AWU supports the proposed amendment.</p>
<p>(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?</p>	
<p>(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?</p>	<p>The AWU supports the proposed amendment.</p>
<p>(xvi) Should emergency sealing in clause 68 of the WHS (MPS) Regulation make provision for re-entry and, if so, include an airlock?</p>	
<p>(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?</p>	<p>The AWU supports the proposal that the emergency plan include more detail. In particular, additional prescription should be included in clause 93 of the WHS (MPS) Regulation as to the manner that testing of the emergency plan is carried out.</p>
<p>(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,</p>	<p>The AWU supports the proposed amendment.</p>

	refuges, firefighting equipment, communications and oxygen stations and to ensure mine workers have a reasonable opportunity to utilise the exits during periodic training?	
(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 AWU supports the proposed amendment.
(xx)	Is it appropriate to continue to refer to standards or should the relevant parts be prescribed within the WHS (MPS) Regulation?	a. The AWU supports the proposed amendment. b. Further, AWU proposes that in addition to the standards component being inserted into the relevant parts of the regulation, the additional reference to the standard be maintained.
(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?	
(xxii)	Is the Resources Regulator’s <i>Innovation policy</i> sufficient for enabling consideration of innovations prevented by legislation or technical standards?	The innovation policy appears sufficient for enabling consideration of innovations that may currently be prevented by legislation.
(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	

<p><u>comply</u> with the requirements of the certificate of conformity or Departmental approval?</p>	
<p>(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 <i>Work Health and Safety (Mines and Petroleum Sites) Exemption (Use of Cables in Hazardous Zones) 2020</i> as published in the NSW Government Gazette No 171 of 7 August 2020?</p>	
<p>(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?</p>	<p>The AWU supports amending the wording of clause 93 to make it consistent with clause 89.</p>
<p>(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?</p>	<p>The AWU supports the proposed amendment.</p>
<p>(xxvii) Should Schedule 3 of the WHS (MPS) Regulation be amended to include raised bore activity as a high risk activity?</p>	
<p>(xxviii) Should the WHS (MPS) Regulation be amended to include a requirement that at least one person who has undertaken safety training as specified</p>	<p>The AWU supports the proposed amendment.</p>

by the regulator be present at an opal mine when mining activity is taking place?	
-----------------------------------------------------------------------------------	--

Submitting the form

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

Post: WHS (MPS) Laws amendments
NSW Resources Regulator
Regulatory Programs
PO Box 344 Hunter Regional Mail Centre 2310 NSW

© State of New South Wales through Regional NSW 2021. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute Regional NSW as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (April 2021) and may not be accurate, current or complete. The State of New South Wales (including Regional NSW), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

DOC 21/241846