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17 May 2021

Resources Regulator

Regulation Development

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HUNTER REGION MAIL CENTRE NSW 2310

Delivered by email: rr.feedback@planning.nsw.gov.au

Dear Resource Regulator

RE: CONSULTATION RESPONSE CFMMEU COMBINED NORTHERN DISTRICT / SOUTH WESTERN DISTRICT REVIEW AMENDMENTS TO WORK HEALTH AND SAFETY (MINES & PETROLEUM SITES) ACT 2013 & REGULATION

Introduction

The Construction, Forestry, Maritime, Mining and Energy Union Northern Mining & NSW Energy District and the South Western District (*“the CFMMEU”*) welcome the opportunity to provide submissions on the discussion paper amendments to Work Health & Safety (Mines & Petroleum) Sites Act 2013 (*“the WHS (MPS) Act 2013”*) & Regulations.

By way of background, the CFMMEU is a registered industrial organisation of employees under the Fair Work Act 2009. The CFMMEU has been representing mining & energy workers throughout NSW for over 150 years, representing workers in underground and open cut coal mines, coal handling processing plants and metalliferous mines.

The CFMMEU provided feedback relevant to the terms of reference of the previously conducted statutory review of the WHS (MPS) Sites Act 2013 & Regulations. Where relevant to the issues or questions for consideration in the feedback, we adopt without repeating that which is set out in our initial submission to the review.

CFMMEU Submits

Turning to the discussion paper, the CFMMEU submits: -

In relation to Question (iii), the functions of SHRs should be modified from that which is currently provided for by the WHS (MPS) Act 2013. The question refers to the expansion of the powers of SHR beyond that of a HSR's functions.

The SHRs perform a more expansive role than HSRs, by virtue of the operation of the WHS (MPS) Act 2013. Section 42 Functions of Mine Safety and Health Representatives at subsection 3 reads that it is a "*function to observe any formal investigation conducted by or on behalf of the mine operator of an event or an occurrence at a coal mine*". The alteration to include participate in investigation improves upon an existing function, as recognised by the outcome to the review. With respect to the enquiry "*Should there be limitations that may be warranted on this exercise?*", no limitations are warranted. The alteration of the words is not empowering the SHRs to embark upon their own investigation, or investigation in isolation of others, but to participate. Any limitation would be self-evident by the participation in the investigation.

In relation to Question (iv), there are concerns regarding adoption of the amendment for the appointment of industry SHRs by the Minister, in circumstances where those appointments would not be feted by those nominated from the CFMMEU, or another employee representative group. Industry SHRs have a long history in the coal mining industry and there is no doubt that a review of that history establishes the superior outcomes as a result. We do not transverse the details of industry SHRs and their predecessors, who were referred to as District Check Inspectors, however relevant to that history is that the roles have always been employee representative roles. Those representative roles were determined by employees in the industry and were appointed by the Minister. Historically, persons were pseudo elected by being elected

to the role of Check Inspector under the rules of the principal union, being the CFMMEU. In recent manifestations of the legislation, it was modified for appointment based upon nomination of the principal industry union.

The amendments could operate to the effect that a person is appointed by the Minister to work as an industry SHR but at no time has been elected or determined by another process to be an employee representative for the role. It is a concern to the CFMMEU and all members we represent that the amendments could result in an ISHR not being truly a representative of employees in the industry. A person could be appointed as an ISHR and be a representative for not a single employee in the industry.

In relation to Question (vi), the WHS (MPS) Act 2013 should not be amended to include provisions equivalent to sections 146 and 148 of the WHS Act 2011. To do so would be effectively obtuse to the functions, roles and powers of an ISHR and the existing equivalent provisions found in the WHS (MPS) Act 2013. One of the functions of the ISHR is to participate in investigations. That function is found at section 29(2)(b). Similarly at section 29(3)(b) ISHR's accompany the government inspector/official when the government inspector/official is carrying out an inspection at a part of a workplace to a mine. No limitation equivalent to sections 146 and 148 of the WHS Act 2011 falls to that government inspector/official. No further limitation arising under the WHS (MPS) Act 2013 should fall to the ISHR under that Act.

The ISHR is not without the requirement specified under sections 146 and 148 of the WHS Act 2011. That limitation falls to the ISHR due to the circumstances that the ISHR, to be an eligible person, must be a person who "*is a WHS entry permit holder*". The limitation in sections 146 & 148 of the WHS Act 2011 falls to persons who are entry permit holders and are exercising their powers relevant to their entry permit. The proposed amendment is obtuse, confusing and simply not needed.

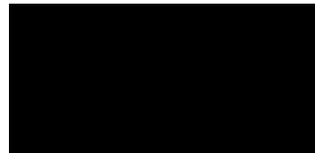
In relation to Question (ix), Clarification is required for rock and coal bursts, and related pressure bursts, to be a principal mining hazard. So much is necessary, as was identified by the WHS (MPS) Act and Regulations review conducted by Mr Bills, as found at page 80 of Statutory Review of the Work Health and Safety (Mines and Safety Sites) Act 2013 and Regulation Report by Independent Reviewer, Kym Bills October 2020. As an industry, the

CFMMEU is seeing more reported coal bursts than outbursts. Clarification is of further importance as the coal mining industry has not been absent of hazards of rock/coal outbursts. Confusion can arise between the mechanisms for outbursts, which are principally caused by in situ gas pressure in the seam and coal bursts. These are principally associated with mining induced seismic activity and the dynamic release of energy stored in the rock mass. There have been repeated incidents that have occurred at the Austar Underground Colliery, where there were the related fatalities, and there have been continuing issues arising at Appin and other coal mines. Improved health and safety outcomes can arise in this regard from greater clarification.

Yours sincerely



**DISTRICT PRESIDENT
NORTHERN DISTRICT**



**DISTRICT PRESIDENT
SOUTH WESTERN DISTRICT**