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Friday 14th October 2011

Safework Australia

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Dear Sir/Madam

Please find a brief submission from the CFMEU Mining and Energy Division prepared against the Draft Chapter 9 Mines of WHS Regulation and in conjunction with the broader WHS Regulation available as at August 2011.

“With the right to regulate comes the responsibility to ensure that the work place is made as safe as possible for those men and women who work in the mines, shift by shift, day by day, year in and year out.” (The Coroner’s Report, Moura No. 2 Fatal Inquiry, p 14)

While the Australian mining industry has recorded record profits almost on a yearly basis for the last decade it has not been able to achieve its stated aim of Zero Harm. While registering falling safety statistics in the areas of LTI and severity rates fatalities have nonetheless continued to occur.

The Regulations need to set clear and comprehensive accountabilities for mine operators, and others, that draw on the lessons learned from the numerous mining accidents and incidents that have occurred in this country.

The CFMEU is strongly of the view that the Model Mine Safety Regulations, in their current form, provide inadequate protection for mineworkers.

While Robens style legislation was introduced in the UK in the early 1970’s (some 40years ago) there are still a number of followers in Australia (most of whom view from afar the real workplace) who believe that it is the best safety solution.

A study tour organised by the Queensland Mines Department in late 2003, to compare the newly introduced Queensland mining legislation against that of Canada, USA and UK mining as well as USA Nuclear Power Plant and the North Sea oil industry safety regimes, returned and reported that the mixture of prescriptive legislation, together with risk based enabling legislation through Safety Management Systems, which had been introduced in Queensland mines in March 2001, was they believed world’s best practice. This legislative regime is still widely regarded as the best OHS practice in mining internationally.

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The process for developing supposed harmonised mining legislation through the Model Health and Safety regulation has, in our opinion, been based purely on cost and a Federal Government based time line with the threat of loss of Federal funding provided to states who do not comply.

The health and safety of those who work “at the coal face” has in our opinion been put at risk by the poor quality of the draft legislation to date and the decision-making and time constrained processes that have been made and imposed to date. The fact that the draft Chapter 9 Regulation for mines does not even comply in full with the Drafting Instruction agreed by a process through the MCMPR and COAG, is further proof of a rushed and disorganised delivery of safety legislation.

While there has been an attempt to develop consistent mining regulation across states and territories involved in the Australian mining industry, no apparent consideration has been given to the inherent differences between surface and underground mining let alone the inherent differences between coal, metaliferous, and small gem mines and quarries. The legislation has been developed to attempt to accommodate all operations and where some aspects of operations do not universally apply, in most cases have been discarded.

“The importance of health and safety requires that workers in mines and all persons affected by mining operations are afforded the highest level of protection against risks to their health and safety.” (National Mine Safety Framework, Core Drafting Instructions for Model Mine Regulations, p8)

While in the just published RIS for mines there is the suggestion that those states, which at best contain approximately 10% of the Australian mining industry, have achieved better safety performance than their larger counterparts, and therefore their mining legislative regimes are the better option, the CFMEU argues strongly that those who have lost their lives in mining incidents should not have died in vain and that the lessons learned from subsequent inquiries should be prescribed to protect all mineworkers; just as they have in the major mining jurisdictions. The value of these lessons should be available to all mineworkers, not just those who work in the major mining states.

The CFMEU objects strongly to the “so far as reasonably practicable” term being used at every chance. The better terms, in our view, are “acceptable level of risk” and that level being as “low as reasonably achievable”.


The Codes of Practice in a number of cases were developed by states that have very limited mining operations and no specific mining legislation or departments. These Codes were not given sufficient time for review by the NMSF committee members or the stakeholder organisations that are represented on it, and only limited time for comparison with the general Act and Regulation. Additionally, we object to the fact that Codes of Practice are being expected to be reviewed/considered and compared against Regulations, which continue to be amended.

There is a need to review these COPs with the Non-core regulations once they are finalised to ensure that critical matters for the major mining states can be included for at least consideration by the other states and territories. This was an agreed matter at the NMSF level.

The CFMEU restates, that it is our view that the process undertaken remains one of political expediency, where unrealistic timeframes and lack of proper consultation runs the real risk of

reducing safety and health standards for mineworkers in this country. Politicians and public servants responsible will be held to account in the spotlight of public opinion, if this undue haste and inadequate legislative protections continues.

Yours in safety

A handwritten signature in cursive script that reads "G. Dalliston".

Greg Dalliston

Industry Safety and Health Representative

CFMEU Mining Division

CFMEU Submission on Draft Codes of Practice for Mining

This Submission needs to be read in conjunction with the CFMEU Submission on the Model Work Health and Safety (Mines) Regulations (the Model Mine Safety Regulations).

The CFMEU is strongly of the view that the Model Mine Safety Regulations, in their current form, provide inadequate protection for mineworkers.

In several key areas – principal hazard management, emergency response, Work Health and Safety Management Systems, and health surveillance for example – too little guidance has been provided for mine operators; too much has been pushed out into Codes of Practice (COPs); and far too much has been left to goodwill or good luck.

The CFMEU has recommended that the deficiencies in the draft Model Mine Safety Regulations be rectified through closer adherence to the tripartite, Ministerially endorsed, *National Mine Safety Framework, Core Drafting Instructions for Model Mine Regulations V8* (the Core Drafting Instructions); and through reference to good practice currently embodied in Queensland and New South Wales mine safety legislation and regulations.

Quite clearly, the existing Mining COPs will need to be reviewed and amended in the light of the changes made to the Model Mine Safety Regulations.

When this is done, care will need to be taken to ensure that the Regulations are accurately reflected in the Codes. There are numerous instances where the existing Mining COPs are at odds with the existing draft Model Mine Safety Regulations, (these errors are highlighted in our Submission). As a result, non-negotiable obligations are at times portrayed as nothing more than recommended options. There is an obvious potential for confusion, and consequent poor safety management, as a result.

It is also highly important to appreciate that the Non-Core Mine Safety Regulations are still being developed.

As these are finalised, it is essential that the better practice contained within the Non-Core Mine Safety Regulations is reflected in the COPs for Mining.

Accordingly, the CFMEU seeks a commitment from government that the COPs for Mining will be reviewed, and amended once the Non-Core Regulations are finalised.

The CFMEU also notes that related general Workplace Health and Safety Codes remain in draft form. Again, once these are finalised it will again be necessary to review the adequacy of the COPs for Mining.

The overly rushed nature of the workplace health and safety harmonisation process has meant that stakeholders have been unable to review legislation, regulations, and COPs in a sequential, coordinated fashion. Instead we are forced to express a position on Codes of Practice well before basic issues such as the appropriate level of regulatory prescription are resolved. There is a very real danger that the simultaneous drafting and redrafting of key documents in unrealistically constrained timeframes will inhibit, rather than encourage, the development of sound safety regulation.

In that context, whilst the CFMEU has provided specific comments on each of the COPs for Mining, we see it as essential that policy makers focus first on ensuring that the Regulations themselves provide greater protection for all mineworkers.

Work Health and Safety Management Systems in Mining

Section 2.2/Page 7 – Managing Principal Mining Hazards

Whilst listing the *prescribed* principal mining hazards, this section fails to make reference to Regulation 9.1.4 (b) of the Model Mine Safety Regulations which provides that a principal mining hazard is also any other “activity, process, procedure, plant, structure, substance, situation or other circumstance relating to the conduct of mining operations, identified by the mine regulator under regulation 9.2.1, that could create a risk of multiple fatalities in a single incident or fatalities in a series of recurring incidents.”

This section needs to be amended to reflect Regulation 9.1.4 (b).

Section 2.3/Page 8 – Elements of a WHS Management System

In our Submission on the Model Mine Safety Regulations, the CFMEU has argued that the Regulations themselves need to be more specific in regard to the contents of a WHS Management System. We have stated that a WHS System *must* include:

- A description of the hazard identification methodology that will be applied at the minesite
- A description of the resources that will be applied to ensure that the System can effectively be implemented
- The Emergency Response Plan
- Induction, training and competency requirements
- Processes for incident response and investigation
- Procedures for records management
- Arrangements for the timely filling of key positions within the management structure for the management of work health and safety at a mine
- A requirement that key positions must be held by competent persons
- Arrangements for the management of risks arising from the use of contractors.

We have also argued that the Regulations need to be amended to stipulate that the WHS Management System should “form part of, and be integrated with, the mine’s overall management system.”¹

Section 2.3, and the accompanying diagram on page 10, should be amended to reflect amendments to the Model Mine Safety Regulations proposed by the CFMEU.

Figure 2/Page 10 – Work Health Safety Management System Diagram

¹ This would be in accordance with the *National Mine Safety Framework Core Drafting Instructions for Model Mines Regulations under the Model Work Health and Safety Legislation*, (the Core Drafting Instructions), Version 8, 24 May 2010, p25.

Regulation 9.2.18 requires mine operators to prepare a Ventilation Control Plan. **This Plan needs to be explicitly referenced in Figure 2.**

Section 3.4/Page 13 – Work Health and Safety Action List

This section would be enhanced by reference to the review requirements contained within Regulation 9.2.8.

Figure 3/Page 16 – Components of the Hazard Management Element

Again, **this diagram needs to be updated to take account of Regulation 9.2.18** and the obligation on Mine Operators to prepare a Ventilation Control Plan.

Section 4.3/Page 20 – Emergency Response Plan

There are numerous sentences in this section that use the word `should' rather than the more appropriate word `must'. The changes required are highlighted below:

- “The emergency plan **must** specify the resources that may be needed...” This would be consistent with Schedule 9.4 (4) in the Model Mine Safety Regulations.
- “Planning **must** also consider resources and people required if the emergency situation continues for more than a single shift”. This would be consistent with the ministerially endorsed Core Drafting Instructions for Model Mines Regulations.²
- “In considering potential emergencies, the following **must** be addressed...” This would reflect both Division 4 of the Model Mine Safety Regulations and Schedule 9.4.
- “Emergency equipment, exit signs and alarm systems **must** be inspected, tested, and maintained at regular intervals.” This would be consistent with the Core Drafting Instructions.³

The section also currently states that “emergency instructions, including the names and control details of key personnel should be clear and placed where all personnel are able to see or find them.” There are a number of deficiencies with this wording. Named persons may not be onsite at the time an emergency occurs. As well, mineworkers need to know who is responsible for what actions in an emergency situation.

The CFMEU suggests the appropriate wording is as follows “emergency instructions, including accountable positions, their roles and responsibilities, and contact details must be clear and placed where all personnel are able to see or find them. These instructions should reflect the roles and accountabilities prescribed in a schedule to the Emergency Response Plan.” Use of the word `must' would be consistent with Schedule 9.4 (2).

Section 4.4/Page 21 – Consultation, Information, Instruction and Training

The CFMEU believes that the words “where possible” should be deleted from the first full sentence on page 21. There is no need to qualify workers' rights to participate in discussions about safety matters relevant to their work.

² See Core Drafting Instructions, p22.

³ Core Drafting Instructions, p24.

The final sentence in this section also needs to be amended to read “the mine operator **must** ensure that all workers requiring training, including contractors and regular visitors, complete the training appropriate to their needs.” The amended sentence would then be consistent with Regulations 9.2.43, and 9.2.44.

Section 4.5/Page 21 – Documentation

To be consistent with Regulation 9.2.6, **the first sentence of the second paragraph in this section needs to be amended** to read as follows “the document **must** describe the core elements of the WHSMS and how they relate.”

The Code currently states that “it is important the [WHSMS] document is readily accessible”. It is more than important, it is a requirement. **This paragraph needs to be amended to reflect Regulation 9.2.6 (1) (j).**

Section 5.1/Page 23 – Monitoring and Measurement

The Core Drafting Instructions provided that the Model Mine Safety Regulations should contain a specific requirement for “regular inspection of the working environment of the mine.”⁴ The CFMEU Submission on the Regulations sought an amendment to enshrine regular inspection as an obligation for mine operators.

This section of the COP should be amended to reflect the Core Drafting Instructions.

Section 5.3/Page 23 – Reviews and Audits

Regulation 9.2.8 (2) provides that a WHMS **must** be reviewed if a risk control measure is revised. **The second sentence of this Section of the Code needs to be amended to reflect this.**

Appendix A/Page 25 – Principal Mining Hazard Management Plans – Risk Assessment

The CFMEU Submission on the Model Mine Safety Regulations recommended changes to the structuring and prescribed content of PMHMPs.

The Code will need to be amended to reflect changes made to the Regulations in this regard.

Emergency Response at Australian Mines

In our submission on the Model Mine Safety Regulations, the CFMEU sought a number of changes to the Regulations regarding emergency response to bring the Regulations into line with the Core Drafting Instructions, and to place obligations on mine operators to include a plan for precautionary withdrawal of mineworkers in their Emergency Response Plan.

⁴ Core Drafting Instructions, p16.

The Code will need to be amended to reflect changes made to the Regulations in this regard.

Section 1.1/Page 6 – Consultation with Emergency Services

This section should be amended to clarify that local emergency services are there to support, rather than substitute for, onsite emergency response capabilities.

Section 2.1/Page 8 – What is an Emergency Plan?

For clarity, the second dot point in this section should be amended to read “the provision of adequate rescue equipment onsite”.

In addition, as outlined in our submission on the Model Mine Safety Regulations, and in accordance with the Core Drafting Instructions, mine operators should be required to provide “for a suitable number of trained persons and maintained equipment to allow for continuous rescue operations to take place at the mine.”⁵

The third dot point of the second sentence needs to be amended to reflect this requirement.

Section 2.2/Pages 8 & 9 – Contents of the Emergency Plan

At present, due to the repeated use of the word ‘should’ rather than correct term ‘must’, this section does not conform to the existing Model Mine Safety Regulations and the Core Drafting Instructions.

The first sentence on page 9 needs to be amended by replacing the word ‘should’ with the word ‘must’ as follows: “the emergency plan must address all aspects of primary emergency response...” This would be consistent with Regulation 9.2.32 (3) (a).

In addition, the third paragraph needs to be amended to read as follows “the emergency plan must provide for”....the listed items. It should be noted that most of these components are already prescribed in the Model Mine Safety Regulations. The notable exception is the reference to the plan providing for “identifying triggers for withdrawal from a part of a mine to a place of safety, or evacuation from a mine.” However, the CFMEU Submission argues that Trigger Action Response Plans for both withdrawal and re-entry should be a mandated component of a mine’s Emergency Response Plan.

An additional dot point could be added to the final paragraph on page 8 to indicate that risk management processes will also assist the mine operator to “brief external emergency services appropriately”.

Section 2.3/Page 9 – Improving Emergency Response – Audit and Review

At present, there are a number of testing and review activities in this section which are listed as tasks mine operators ‘should’ undertake. Those tasks are actually already prescribed in the Model Mine Safety Regulations, and are compulsory. For instance, the COP currently indicates that mine operators ‘should’ regularly inspect and ensure that all emergency equipment is working. By contrast, this is a mandated requirement in Regulation 9.2.34.

⁵ See Core Drafting Instructions, p22.

The COP should be amended to reflect Model Mine Safety Regulation requirements.

This section could also be amended to provide that regular mine rescue training for emergency response workers should be to accredited requirements.

Section 4.1/Page 12 – Coordination and Control of Emergencies

The CFMEU believes that the second last paragraph in this section, and the matching Regulations, need to be amended to provide that “there must be standing instructions regarding the initiation of emergency procedures.”

Section 5.1/Page 14 – Communication

In accordance with Regulations 9.2.43 (f), and 9.2.44 (c), all references to the word ‘should’ need to be replaced with the word ‘must’. Communication about the Emergency Response Plan is mandated in the Regulations.

Section 5.2/Page 14 – Communication-Underground Mines

There are words missing from this section.

Section 6.1/Page 15 – Minimising the Effects of an Emergency Situation

Once again this section needs to be amended to take account of the need for mine operators to provide adequate resources and equipment to allow for continuous rescue operations.

Section 7/Pages 17, 18, 19, & 21 – Withdrawal and Re-entry

The entirety of this section needs to be rewritten in accordance with changes to the Model Mine Safety Regulations proposed by the CFMEU.

The CFMEU has recommended that the Regulations be amended to require:

- Mine operators to include a plan for precautionary withdrawal of mineworkers within their Emergency Response Plan
- The withdrawal plan to include documented Trigger Action Response Plans for both withdrawal and re-entry
- Withdrawal to a place of safety (as defined)
- Withdrawal to be mandated in certain circumstances – these should reflect the provisions in the Queensland *Coal Mining Health and Safety Act 1999* and the findings of the Moura No.2 Warden’s Court Inquiry.
- An explicit right for a mineworker to withdraw to a place of safety if the mineworker reasonably believes his health or safety is seriously endangered.

Section 7.17/Page 24 – Guidance System and Lifelines Procedures

The CFMEU believes that the word ‘should’ needs to be replaced with the word ‘must’ throughout the first paragraph of this section in order to be consistent with Regulations 9.2.38 and 9.2.39. Provision of a system to aid people to escape in conditions of reduced visibility is a mandated requirement.

Section 7.22/Page 27 – Locating Persons in the Event of an Emergency

Once again, **the CFMEU believes that the word `should' needs to be replaced with the word `must' in order to be consistent with Schedule 9.4 (5) (5.1) of the Model Mine Safety Regulations.**

Inundation and Inrush Hazard Management

In our Submission on the Model Mine Safety Regulations the CFMEU has sought significant amendments to the Regulations applying to inundation and inrush hazard management.

We have proposed that Section 33 of the *Coal Mine Health & Safety Regulation (NSW)* 2006, and the full contents of Section 12 of the Core Drafting Instructions, be mirrored within the Model Mine Safety Regulations. This will ensure that the lessons learnt from NSW's Gretley mine disaster are applied at all mines.

This Code will need to be substantially amended to reflect changes made to the Regulations in this regard.

Page 3 – Scope and Application

At Section 5.1, page 18, it is stated that “this Code deals only with first workings”. This is not clear in the Scope and Application section on Page 3. It leaves the reader uncertain as to where/how inundation risks associated with second workings (eg inundation of the workings via gases from a goaf fall) are to be managed.

Upfront clarification of the scope of the Code is required.

Section 1.1/Page 5 – What is Inundation and Inrush?

The listing of inrush hazards needs to be amended to make it clear that not all of these circumstances need to be in place for there to be an inrush or inundation hazard.

Section 2/Page 7 – Identifying Hazards

In our submission on the Model Mine Safety Regulations, the CFMEU has recommended that, in accordance with the Core Drafting Instructions, “mine operators must be obliged to obtain a copy of all historical survey plans from relevant persons before commencing mining operations”.⁶

This section will need to be amended to reflect changes made to the Regulations.

⁶ See Core Drafting Instructions, p45.

Section 2.1/Pages 7 & 8 – Sources of Inrush

The list of potential inrush sources is not exhaustive and yet it is presented as such. **Either, the list needs to be modified so that it is genuinely comprehensive (by, for example, inclusion of such sources as tailings dams); or it needs to be clearly stated that the list is indicative only.**

In addition the COP currently sets out (in the penultimate paragraph on page 7) inrush hazards that 'should' be considered in the seam or area being mined. **The word 'should' needs to be replaced with the word 'must' to bring this section into line with Schedule 9.2 (2) of the Model Mine Safety Regulations.**

Section 2.2/Page 9 – Identifying Inundation or Inrush Hazards

This section needs to be amended to indicate that, as per Schedule 9.2 (2), mine operators are required to consider the worst case scenarios for each potential inrush source.

Section 3.1/Page 12 – Factors to Consider

Risk assessments must include workers. **The final paragraph in this section needs to be amended to reflect this, and the existing requirement in Regulations 9.4.1 and 9.4.2 (b).**

The CFMEU also believes that the risk assessment process must take account of any existing relevant plans, files or other materials. This would be consistent with the NSW Regulatory approach. **The final sentence in this section needs to be amended accordingly.**

Section 3.2/Page 12 – Documenting the Risk Assessment

The word 'should' needs to be replaced with the word 'must' throughout this section, in accordance with the CFMEU's Submission on the changes required to the Model Mine Safety Regulations.

Section 4/Page 14 – Controlling the Risks

This section needs to be rewritten to more clearly reflect the application of the hierarchy of controls. At present, it is not obvious that one option for mine operators may be to remove personnel from the area where an inundation or inrush hazard may exist.

It is also unclear how warnings alone could be seen as a control which would minimise the likelihood of inrush or inundation.

Section 5.2/Page 19 – Geological Anomalies

This section, and others, refer to mine operators needing to make 'conservative' estimates. The term 'conservative' is not defined. Given that one mine operator's view of what is a 'conservative' estimate may differ markedly from another's, **the CFMEU believes that either this term should be defined, or it should be replaced with a clearer requirement.**

Section 6/Page 20 – Reviewing Controls

The questions asked of workers should be open questions eg “What has been the impact, if any, of new work methods?”; rather than the existing closed questions eg “have new work methods or new equipment made the job safer?”

Section 6/Page 20 – Monitoring Controls

With reference to the three listed means of monitoring principal hazards in paragraph 2, all of these should be applied to all specific inundation or inrush hazards.

The third paragraph in this section needs to be amended accordingly.

Section 7.3/Page 21 – Response

The CFMEU is concerned that the response section gives insufficient emphasis to precautionary withdrawal of personnel when the nature or magnitude of an inundation or inrush hazard is unclear.

In such a circumstance the CFMEU would expect that a mine operator’s Trigger Action Response Plans would require withdrawal until such time as the situation can be better understood, and a considered decision made regarding the extent of risks to workers’ safety.

Section 8.1/Page 23 – Emergency Management Plan Information

At present, this section indicates that mines with inundation or inrush hazards “should have an Emergency *Management* Plan which includes information covering a principal inundation or inrush hazard”.

By contrast, the Model Mine Safety Regulations require mine operators to have both a Principal Hazard Management Plan, and an Emergency Plan, which encompass inundation and inrush prevention, management, and response.

The CFMEU suggests that this section be reworded to reflect the actual requirements contained within the Model Mine Safety Regulations.

Health Monitoring in Mining

In our Submission on the Model Mine Safety Regulations, the CFMEU has stressed the importance of monitoring for the effects of the wide range of hazards that may impact on mineworkers’ health.

As indicated on page 6, this Code is almost exclusively focussed on monitoring “in relation to exposure to hazardous chemicals in mining.” (Some other hazards are dealt with in Appendices).

The CFMEU strongly believes that this COP needs to be expanded to encompass health monitoring in relation to all hazards which may potentially impact on mineworkers. This will necessitate a significant rewrite of the Code.

Our Submission also discussed the need to clarify the scope of the terms ‘health monitoring’ and ‘health surveillance’. **This Code will need to be amended to reflect changes to the Regulations in that regard.**

Section 1.2/Page6 – What is Health Monitoring In Mining?

It is not clear how health monitoring can ‘take into consideration’ personal hygiene and reproductive capacity.

Section 1.2/Page 6 – Hazardous Chemicals Under Schedule 14

There are words missing from this section which make its application confusing.

Section 1.5/Page 9 – When Does Health Monitoring Occur?

This section needs to be augmented by inclusion of Regulation 9.3.4 (3) (c) which states that “health monitoring must be carried out...at a frequency determined by the mine operator in consultation with a registered medical practitioner (but at least every 5 years)”.

The CFMEU notes that part of Regulation 9.3.4 (3) (c) has been inappropriately included in Section 1.6. This reference needs to be deleted.

Section 2.1/Page 10 – Health Monitoring for Workers Exposed to Significant Levels of Hazardous Chemicals

This section should begin by setting out when health monitoring must occur.

The section should also reiterate Regulation 9.3.4 which provides that “the mine operator must consult the worker in relation to the selection of the registered medical practitioner and the timing of the monitoring.”

Section 2.2/Pages 11 & 12 – Health Monitoring for Specific Hazardous Chemicals Listed

There are words missing in the second paragraph of this section which make its meaning less than clear.

The wording of the final sentence in the first paragraph on page 12 is also poor. There should be no obligation on medical practitioners to find ill health where none exists!.

Appendix B/Page 23 – Respirable Crystalline Silica

In accordance with Regulation 9.3.6, the third sentence on page 23 needs to be redrafted to provide that “the mine operator **must** keep a health record”...

Appendix C/Page 27 – Coal Dust

The second paragraph of the Monitoring sub-section indicates that workers' exposure to coal dust should be "adequately controlled". It is not clear what this means.

The CFMEU believes that this Appendix needs to be clearly cross-referenced to control provisions in the COP on *Ventilation of Underground Mines*.

Appendix E/Page 30 – Heat Stress

The current wording of this Appendix is inadequate.

The Appendix does not sufficiently consider the realities of an underground working environment. For example, in an underground mine simply standing, walking or travelling in roadways that are at a high enough effective temperature may induce heat stress or worse.

There is also insufficient guidance on how heat stress may be both prevented, and managed; and too little focus on the importance of mineworker education and training, appropriate work practices, engineering solutions, and how transitions (such as a return to work after an extended period) are best approached.

The CFMEU believes that this Appendix needs to be reviewed in conjunction with Section 2.4 of the draft COP on Ventilation in Underground Mines, with both documents being redrafted to provide clearer and more comprehensive guidance to mine operators and mine workers.

Ground Control in Open Pit Mines

Page 3 - Scope and Application

At present the Code does not deal with windrows, or overburden dumps. These are two areas where poor identification and management of hazards can result, and have resulted, in serious incidents.

The risks posed by overburden dumps are recognised in the existing *Coal Mine Health & Safety Regulation (NSW) 2006*⁷, the Core Drafting Instructions⁸, and in Schedule 9.2 (1) of the Model Mine Safety Regulations themselves.

The Code should be expanded to explicitly deal with identification and management of hazards associated with windrows and overburden dumps.

Section 1.3/Page 6 – Duties

This section states that it is the responsibility of the mine operator to develop a formal Ground Control Management Plan. It is not clear in this section (and not clear until page

⁷ See Section 29.

⁸ Core Drafting Instructions, p30.

27), whether this Plan is, or is a subset of, a Ground/Strata Instability Principal Mining Hazard Management Plan.

The status of the Ground Control Management Plan needs to be clarified upfront.

Section 2.5/Page 26 – Mining Through Underground Workings

There are several critical issues not canvassed in this section, namely:

- Spontaneous combustion management when working through old underground workings
- Provision of gas detectors or self rescuers in machines operating above old workings
- Development of emergency procedures for use if a machine falls into a void.

The CFMEU recommends that this section be expanded to address the issues listed above.

Strata Control in Underground Coal Mines

The CFMEU Submission on the Model Mine Safety Regulations proposes a number of changes to the regulation of ground control in underground mines. In essence, the CFMEU believes that strata control is an area of activity where greater prescription is required to provide adequate protection for mineworkers.

This Code will need to be amended to reflect changes made to the Regulations in this regard.

Section 2.2/Page 5 – Assessing the Risks

The CFMEU believes that the word `should' in the lead in to the final paragraph on Page 5, needs to be replaced with the word `must'. These are matters that are appropriately prescribed in regulations.

Section 3.1/Page 8 – Estimation of the Geological Conditions

Once again, and in accordance with the CFMEU's submission on the Model Mine Safety Regulations, **the word `should' needs to be replaced with the word `must' in the first sentence of this section.** A PMHMP for strata instability **must** make provision for the estimation of the geological environment likely to be encountered.

Section 3.3/Page 9 – Mining Geometry

Again, in accordance with our comments in our submission on the Regulations, **the word `should' should be replaced with the word `must' in the second sentence of this section.** This would also bring the section into alignment with Schedule 9.2 (g).

Section 3.5/Page 10 – Section Reviews

In light of the wording contained within Regulations 9.2.4, and 9.2.12. the word `should' needs to be replaced with the word `must', in the first paragraph of this section. The matters listed constitute either significant changes to mining operations, or notifiable incidents; that would necessitate review of risk control measures, and accompanying review of the PMHMP.

Sections 3.6, 3.7, 3.8, & 3.9/Pages 10 – 15

The CFMEU strongly believes that the use of the word `should' in these sections needs to be reviewed in the light of our recommended changes to the regulation of strata control and PMHMPs, and in the context of existing obligations in both the Model Mine Safety Regulations and the General Regulations.

There are numerous instances where the only appropriate word is `must'. For example:

- “roadway and roof reinforcement design **must** be performed by a person or persons with the appropriate expertise and experience
- the mine operator **must** provide roof supports that are designed for the duty required.
- the persons installing roof support **must** be supplied with support rules for the purpose
- breaker line supports **must** be kept in a fit for purpose state”

Those instances, and many others in these sections, are not circumstances where mine operators need have any other alternative than compliance.

The CFMEU strongly recommends that the word `should' be replaced with the word `must' throughout these sections.

Appendix B/Page 28 – Examples of Functions and Responsibilities

As outlined in our submission on the Model Mine Safety Regulations, workers involved with strata control must be able to withdraw to a safe location if they have a reasonable belief that a strata failure is imminent. Workers should not need to wait until the fall has occurred!

This segment needs to be amended to allow for workers' precautionary withdrawal.

Ventilation of Underground Mines

In our Submission on the Model Mine Safety Regulations, the CFMEU has recommended a number of significant changes to the Regulations covering ventilation; has asked that the core elements of a mine's Ventilation Control Plan be stipulated in the Regulations; and has asked that the relationship between the proposed Ventilation Control Plan and PMHMPs be formally clarified.

This Code will need to be amended to reflect changes made to the Regulations in this regard.

The CFMEU is also concerned that, given that considerable material on the properties of individual gases is included in this COP, some readers may, wrongly, see it as comprehensive. The discussion on methane on page 11, for example, may leave a reader with the view that the gas is only to be found in cavities or layers close to the roof. CH₄ can also be found on the floor.

The CFMEU suggest that descriptions of gases either be made comprehensive; or be clearly flagged as indicative only.

Section 2.2/Page 8 – Gaseous Contaminants

The CFMEU believes that the minimum requirements for sampling and monitoring need to be stipulated in the Ventilation Control Plan regulation. **This section should be amended to reflect this.**

For clarity's sake, it would be useful to indicate that the Plan should provide for both hand held detectors, and those that are permanently placed for environmental monitoring at specific locations.

Ventilation related inspection requirements need to be documented in procedures. **The COP should be amended accordingly.**

Section 2.2/Page 11 – Methane

The box in this section needs to be amended to make it clear that the supply of electricity needs to trip automatically in a production area where the concentration of methane exceeds 1.25%.

The section should also be augmented by inclusion of information about trip levels for shearer drums and miner heads.

Section 2.3/Pages 15 & 16 – Non-gaseous Contaminants, Airborne Dust

The CFMEU has recommended that Regulation 9.2.21 be amended to make it clear that the provision of personal protective equipment should not be seen as a substitute for prevention of worker exposure to unacceptable limits of airborne dust.

The COP will need to reflect this change to the Regulation.

The CFMEU also considers that the current discussion of controls in relation to coal dust is inadequate.

The section needs to detail the various hazards posed by coal dust (ie explosion, respiratory impairment, and reduction of visibility to the point where worker's mobility and capacity to escape is inhibited).

The discussion on controls needs to reflect the variety of hazards.

In addition, it must be clearly stated that "if the average concentration of respirable dust in the atmosphere cannot be reduced to the prescribed levels, the controls for minimisation of dust **must** be reviewed."

The COP needs to be amended in accordance with the above comments.

Section 2.4/Pages 18 & 19 – Temperature, Humidity and Velocity

In our Submission on the Model Mine Safety Regulations, the CFMEU has recommended that Regulation 9.2.19 be amended to include the basic requirements for heat stress management outlined in the *Coal Mining Health and Safety Regulation 2001* (Qld) at section 369.

Changes to the Regulations need to be reflected in the COP.

The suggestion that the risk of exposure to heat in a mine is controlled by a ventilation velocity of 0.3m/sec is not supportable. Ventilation that low can barely be felt.

In accordance with our comments on Appendix E – Heat Stress, of the draft COP on *Health Monitoring in Mining*, the CFMEU believes that both the Appendix and this section need to be reviewed, and redrafted to provide clearer and more comprehensive guidance to mine operators and mine workers.

Section 2.4/Page 20 – Detection of Spontaneous Combustion

Once again, this section may be misread as providing a comprehensive account of all of the means by which spontaneous combustion can be detected. **The section should either be made comprehensive, or be clearly flagged as indicative only.**

Section 3.6/Page 25 – Auditing and Review

At present this section sets out the circumstances under which the Ventilation Control Plan 'should' be reviewed. **In accordance with Regulation 9.2.4 the word 'should' needs to be replaced with the word 'must'.** The circumstances listed all qualify as circumstances which would necessitate a mandatory review of risk control measures (in this case, the Ventilation Control Plan).

Roads and Other Vehicle Operating Areas

In our Submission on the Model Mine Safety Regulations, the CFMEU has proposed that the Regulations need to be amended to specify additional contents for the *Roads, Other Vehicles Operating Areas and Traffic Management* PMHMP. **This COP will need to be amended to reflect changes made to the Regulations in this regard.**

Section 2/Page 6 – Identifying the Hazards

For completeness, **the CFMEU suggests that the second dot point on this page be augmented with the words "and making a written report after inspection."**

In addition, there are several other unwanted events that should be listed namely:

- movement of large loads (low loaders)
- light and heavy vehicle interactions
- excessive watering of roads
- potential for road material to be projected by vehicular traffic.

The section should be amended accordingly.

Section 3/Page 7 – Assessing the Risks

The final paragraph of this section would be enhanced by insertion of the following sentence “Including a person who undertakes inspections of the working areas including roads and ramps.”

Section 4/Page 8 – Controlling the Risks

The boxed text in this section asserts that Regulation 9.2.3 “requires the mine operator to eliminate the risks associated with the principal mining hazard.” This is not actually what Regulation 9.2.3 says. **The boxed section needs to be amended to focus on the application of the hierarchy of controls. The section should also note that PPE may not be sufficient to control the risks identified in this COP.**

Section 4.1/Page 8 – Design

The CFMEU strongly suggests that the beginning of this section be redrafted to reflect the wording currently contained within the *National Mine Safety Framework Non-Core Drafting Instructions for Mine Safety and Regulations* on the Design and Construction of Mine Roads⁹. This will provide far greater guidance for mine operators, and protection for mineworkers.

The following wording needs to be added:

“The mine must have a specification for the design and construction of mine roads to enable the safe movement of vehicles about the mine.

The specification needs to have regard to the particular conditions at the mine, including:

- the characteristics of the mine vehicles;
- the types of materials used for road construction;
- the methods of working the mine (this would incorporate consideration of the anticipated life of roads and ramps; the types of roads/ramps required; frequency of use; and expected traffic interactions) .

The specification must be developed through a formal risk assessment process and encompass road barriers; curvature; grade; guideposts; pavement shape; safetyberms; signs; surface material; and width.

The specification must provide for appropriate control measures for preventing persons and vehicles from falling over road edges with a vertical drop of more than 0.5m.

⁹ *National Mine Safety Framework Non-Core Drafting Instructions for Mine Safety Legislation and Regulations*, June 2011, p58.

For a primary haul road regularly used for 2-way traffic, the specification must provide for a road width at least 3.5 times the width of the largest vehicle regularly using the road¹⁰. “

Another matter which should be considered in the design of road sub-base and pavement is “the type of material that can be used on the road surface to improve traction”. **This consideration needs to be added to the bottom of page 8.**

Section 4.1/Page 9 – Road Widths

This section should be amended to require road widths on two lane roads to be at least 3.5 times the width of the largest vehicle.

In addition, the final sentence relating to underground roads should be augmented by inclusion of “provision at appropriate locations for **pedestrians**, passing and two-way traffic.”

Section 4.1/Page 9 – Road Gradients

This section needs to be augmented with an additional sentence as follows: " taking into account all the above, road and ramp gradients must not exceed 10%". The requirement reflects existing industry practice.

Section 4.1/Page 9 – Road Curvature – Vertical and Horizontal

This section would be enhanced by inclusion of an additional dot point namely “vehicles’ configuration and centre of gravity.”

Section 4.1/Page 10 – Sight Distances

In addition to the matters listed, **the CFMEU suggests that mine operators be required to consider signage at intersections and delineation on all roads” when managing sight distance.**

Section 4.1/Page 10 – Mine Watering Procedure

The CFMEU strongly believes that a new section needs to be inserted requiring surface mines to have a documented procedure, based on a risk assessment, for maintaining and watering mine roads, including dealing with hazards caused by excessive watering of roads.¹¹

Poorly planned, and/or executed, mine watering has played a substantive role in numerous serious mine safety incidents.

Section 4.1/Page 11 – Edge Protection

The protective value of safety berms or windrows is strongly influenced by the soundness of the windrow itself. **The CFMEU believes that an additional sentence should be added to**

¹⁰ A ‘primary haul road’ means a road (a) intended to be used, during the life of the mine, by heavy vehicles to move overburden, coal and reject material from the mine; and (b) capable of carrying mixed traffic at high speed. ‘Width’ for a road means the width of its useable running pavement clear of guideposts, grader rills and safety berms.

¹¹ This would mirror existing better practice as prescribed in the *Coal Mining Safety and Health Regulation* (Qld) 2001 at Section 129.

this section as follows:

“Safety berms and other road barriers should be designed and constructed to an engineering standard to prevent the largest/ heaviest loaded vehicle which may use the area, breaching the berm or barrier at the design speed for the location.”

In addition, where rear dump trucks are required to dump up to, or over, an edge at a surface mine, the mines WHS Management System needs to provide for construction and maintenance of a safety berm to reduce the risk of trucks toppling over the edge¹².

Section 4.1/Page 11 – Intersections

The fourth dot point in this section should be extended to read as follows: “using traffic islands to split and clearly delineate traffic while ensuring vision is not restricted.”

In addition, the CFMEU believes that the section would be enhanced by inclusion of an additional dot point namely: “clear delineation of the intersection”.

Section 4.1/Page 12 – Workshops

In addition to the matters listed, **the CFMEU strongly believes that mine operators should give consideration to the development, and implementation, of procedures for managing vehicle movements in these areas.**

Section 4.1/Page 12 – Insertion of New Provisions

The CFMEU believes that this section needs to be augmented by inclusion of provisions relating to discharging loads; and engine shutdown and fire suppression.

We suggest the following wording:

“Discharging loads

A surface mine must have a documented procedure for discharging loads from fixed and mobile plant. The procedure must include provision for the following for dump trucks—

- (a) the design, construction and maintenance of safety berms on roads used by the trucks;
- (b) identifying risks of the trucks overturning;
- (c) safe dump areas and routes;
- (d) methods of working with the trucks.

Engine shutdown and fire suppression

A surface mine’s safety and health management system must provide for—

- (a) each manually operated earthmoving machine used on a stockpile or coal waste dump at the mine to be fitted with an automatic fire suppression system; and

¹² See the *Coal Mining Safety and Health Regulation* (Qld) 2001 at Section 139.

(b) the machine's engine to be capable of being stopped, independently of the operator, if a risk assessment indicates the machine may become buried."¹³

Section 4.4/Page 13 – Restricted Access Exclusion Zones

As it is currently worded, this section provides insufficient guidance to mine operators on better practice procedures for the management of risks around stockpiles and waste dumps.

The CFMEU strongly suggest that this section be reworded to reflect the provisions contained within Part 10 of the *Coal Mining Safety and Health Regulation (Qld) 2001*.

Section 4.7/Page 15 – Lighting

This section needs rewording to specify that mine operators need to provide adequate lighting, having regard to shadow, contrast and glare, in each area of the mine in which work is to be carried out.

Section 4.9/Page 15 – Signage

This section needs to provide greater guidance to mine operators by requiring them to consider signage sizes and vision ranges from the perspective of operators of heavy, and left-hand drive equipment.

Signage should also include delineation of road running surfaces.

Section 5/Page 16 – Review of Control Measures

The questions asked of workers need to be open questions eg "What has been the impact, if any, of new work methods?"; rather than the existing closed questions eg "have new work methods or new equipment made the job safer?"

Underground Winding Systems

In our submission on the Model Mine Safety Regulations, the CFMEU has sought substantial changes to the provisions dealing with mine shafts and winding.

The Code of Practice on Underground Winding Systems will need to reflect amendments to the Regulations in this regard.

In addition, the CFMEU believes that the existing draft COP is fundamentally inadequate for the mining industry. By way of example, the document is deficient on rope guidance, types, weights and configuration, braking systems and there is no mention of Drift winders.

¹³ As per sections 133, and 136 of the *Coal Mining Safety and Health Regulation (Qld) 2001*.

The New South Wales Government's revised Mining Design Guideline 33 (in draft form at the moment, incorporating MDG 12, MDG 26 and MDG 33) is a Guideline for Design, Commissioning and Maintenance of Drum Winders. The CFMEU view is that this document would form a far more comprehensive, and useful, basis for a revised Underground Winding Systems COP.

Accordingly, we have not attempted to comment on all of the deficiencies in the existing draft COP.

The Mine Record

Section 1.2/Page 4 – Purpose of the Mine Record

For greater clarity, the CFMEU suggests that the first sentence of this section be replaced with wording contained in the Core Drafting Instructions as follows: "the mine record is essentially a repository of information about prior incidents and risks to health and safety at the mine."¹⁴

Section 1.3/Page 4 – What Must A Mine Record Contain?

Consistent with our comments on health surveillance in our submission on the Model Mine Safety Regulations, **the CFMEU believes that this section should specify that a mine record must include "a record of health surveillance results".**

Section 1.5/Page 4 – Access to the Mine Record

In our submission on the Model Mine Safety Regulations the CFMEU sought amendments to the Mine Record Regulations to specify that the Mine Record must be "easily accessible to workers at the mine." This wording reflected that contained within the Core Drafting Instructions¹⁵.

This section will need to be amended to reflect changes made to the Regulations in this regard.

Section 1.7/Page 5 – For How Long Should the Mine Record be Kept?

The second sentence of this section misquotes Regulation 9.1.7, (and Regulation 9.7.1).

The statement that a previous mine operator must provide the mine record of the previous seven years to the new mine operator is supported by the CFMEU in our Submission on the Model Mine Safety Regulations, and is consistent with the Core Drafting Instructions¹⁶, but is not an accurate reflection of the current wording of the Regulations.

This section will need to be reworded to reflect changes made to the Regulations.

¹⁴ See Core Drafting Instructions, p47.

¹⁵ At p47.

¹⁶ At p48.

Survey and Drafting Directions for Mine Surveyors

Section 1.1/Page 6 – Compiling Mine Plans

In our submission on the Model Mine Safety Regulations, the CFMEU has recommended that, in accordance with the Core Drafting Instructions, “mine operators must be obliged to obtain a copy of all existing historical survey plans from relevant persons before commencing mining operations”.¹⁷

This section will need to be amended to reflect changes made to the Regulations.

Section 1.3/Page 6 – Functions of a Mine Surveyor

As per Regulation 9.5.2, **the mine surveyor’s functions should also include participation in the review of survey plans at least annually, and at any time there is a significant change to the mine.**

There are also words missing from this section.

Section 3.6/Pages 11& 12 – Information to be Shown on the Mine Workings Plan

In accordance with Regulation 9.5.1 (3) (h), the first paragraph of **this section should be amended to provide that a mine plan must clearly show “refuges (in an underground mine).”**

In accordance with the Core Drafting Instructions¹⁸, Survey Plans for underground mines should also show areas where spontaneous combustion has occurred, and stability of wells in goaf areas. **Page 12 of this COP needs to be amended accordingly.**

Section 3.11/Page 14 – Certification History

The wording of this section is confusing.

.....

These submissions have been written for the CFMEU by S Johnson, with technical direction from the CFMEU by G Dalliston, C Gilbert, I Murray, K Shaw, T Schram and A Vickers

¹⁷ See Core Drafting Instructions, p45.

¹⁸ Core Drafting Instructions, p45.

Model Work Health and Safety Regulations for Mining - Public Comment Response Form

Individual/Organisational name: CFMEU Mining and Energy Division

Regulations Chapter 9: Mines

“With the right to regulate comes the responsibility to ensure that the work place is made as safe as possible for those men and women who work in the mines, shift by shift, day by day, year in and year out.” (The Coroner’s Report, Moura No. 2 Fatal Inquiry, p 14)

“The Review is of the view that, essentially, the purpose of safety legislation should be to foster the best possible individual and industry safety performance in terms of preventing serious injury and death. As we have seen, organisations and sites vary in terms of the priority given to safety management, and the effectiveness of measures in place. Not every one, or even most of them, will strive for best practice. Some will be content to comply with whatever is seen to be the minimum requirement, others will have little motivation even to achieve that. Mining safety legislation needs to be framed in the context of the considerable range of sizes and types of operations, and of standards of safety performance.” (p67) (NSW Mine Safety Review 199, s5.5).

“The importance of health and safety requires that workers in mines and all persons affected by mining operations are afforded the highest level of protection against risks to their health and safety.” (National Mine Safety Framework, Core Drafting Instructions for Model Mine Regulations, p8)

The Model Work Health and Safety (Mines) Regulations (the Model Mine Safety Regulations) need to provide all mineworkers, throughout the country, with a common, core, and credible level of safety protection.

The Regulations need to set clear and comprehensive accountabilities for mine operators, and others, that draw on the lessons learnt from the numerous mining accidents and incidents that have occurred in this country.

The CFMEU is strongly of the view that the Model Mine Safety Regulations, in their current form, provide inadequate protection for mineworkers.

In several key areas – principal hazard management, emergency response, Work Health and Safety Management Systems, and health surveillance for example – too little guidance has been provided for mine operators; too much has been pushed out into Codes of practice; and far too much has been left to goodwill or good luck.

The CFMEU believes that the deficiencies within the Model Mine Safety Regulations can readily be rectified through more faithful adherence to the tripartite, Ministerially endorsed, *National Mine Safety Framework, Core Drafting Instructions for Model Mine Regulations V8* (the Core Drafting Instructions); and through reference to good practice currently embodied in Queensland and New South Wales mine safety legislation and regulations.

The CFMEU cannot and does not support the Model Mine Safety Regulations in their current form.

The CFMEU's detailed comments on the Regulations are set out below.

Part 9.1

Insert definitions for 'health surveillance' and 'health monitoring'.

There is a clear need to ensure that the terms 'health surveillance' and 'health monitoring' are defined in the Model Mine Safety Regulations.

The Core Drafting Instructions provide that mine operators must have a duty to establish a system for health surveillance that would have two components (a) "periodic monitoring of the level of risk likely to adversely affect a person's health arising from hazards at the mine" and (b) "medical examination of workers". The Drafting Instructions also state that "the Mine Safety Regulations must require that the health surveillance system provide for measures by which the mine operator shall ensure that a worker's exposure to a hazard at the mine does not exceed national exposure standards and is as low as reasonably practicable."¹⁹ (The CFMEU is of the belief and has previously stated that the underground coal industry cannot meet the requirements that are stipulated in some of the national exposure standards).

By contrast, the Model Mine Safety Regulations adopt a very narrow approach to health monitoring. Monitoring and controlling levels of risk to health is essentially ignored.

¹⁹ *National Mine Safety Framework Core Drafting Instructions for Model Mines Regulations under the Model Work Health and Safety Legislation*, Version 8, 24 May 2010, p25.

There also appears to be a view, as exemplified in the *Draft model Work Health and Safety (WHS) Regulations and draft model Codes of Practice for Mines Issues Paper* (the Issues Paper), that the terms ‘health monitoring’ and ‘health surveillance’ are interchangeable²⁰. They are not.

The CFMEU notes that Section 7.1.53 of the *Model Work Health and Safety Regulations*, (‘the General Regulations’) published on 7 December 2010, does place a duty on a person conducting a business or undertaking (PCBU) to provide health surveillance. However, this duty is confined to medical monitoring for the effects of hazardous chemicals. Similarly, the draft *Code of Practice for Health Monitoring in Mining* is almost exclusively focussed on medical monitoring in relation to exposure to hazardous chemicals in mining.

Mineworkers’ health may be affected by, amongst other hazards, exposure to noise, dust, vibration, diesel particulates and particular work practices. There may also be health hazards which are yet to be recognised as such. Without a pro-active program of surveillance, **in addition to standard medical monitoring**, mineworkers may suffer significant, and even permanent, damage to their health.

Part 9.1 needs to be amended to include definitions of ‘health surveillance’ and ‘health monitoring’ that reflect the Core Drafting Instructions. The extent of the medical examination/tests shall be determined by the regulator and prescribed in regulation e.g. Joint Coal Board, and QLD coal board medical approved forms.

Insert definition for ‘principal control plan’.

²⁰ *Draft model Work Health and Safety (WHS) Regulations and draft model Codes of Practice for Mines Issues Paper*, Safe Work Australia, July 2011, p15.

At Regulation 9.2.18 mine operators are required to prepare a Ventilation Control Plan; however the concept of a `control plan` and how it links to Principal Mining Hazard Management Plans is not explained. **Given that the control plan concept will be new for many jurisdictions it would be useful to define the concept.** It would also be helpful for both `Core` and `Non-Core` jurisdictions to use the same terminology for what will essentially be the same type of document. The CFMEU notes that the *National Mine Safety Framework Non-Core Drafting Instructions*²¹ (the Non-Core Drafting Instructions) use the term `principal control plan` and suggests that this terminology be adopted in the Model Mine Safety Regulations.

Regulation – 9.1.9

The CFMEU does not support the proposed definition of a person “adversely affected by alcohol or drugs”. The definition is unnecessary, circular, highly subjective, and open to abuse. The focus of the Fitness for Work section of the Model Mine Safety Regulations needs to be on ensuring that appropriate drug and alcohol testing regimes are in place at each minesite.

Regulation 9.1.9 needs to be deleted.

²¹ *National Mine Safety Framework Non-Core Drafting Instructions for Mine Safety Legislation and Regulations*, June 2011, p85.

Part 9.2

Regulation – 9.2.2

The Core Drafting Instructions provide that mine operators must assess “risks arising from each hazard, developing a method of assessment that adequately addresses the hazards identified”²². The Drafting Instructions go on to provide examples of methods that could be used.

The emphasis is on ensuring that risk assessment is conducted systematically, rather than in an ad hoc fashion. There is also a need to ensure that any risk assessment takes into account not simply the likelihood of an event occurring, but also its consequences. In addition, risks need to be prioritised to ensure that resources are allocated where they are needed most.

At present Regulation 9.2.2 provides no guidance as to how risk assessment must be conducted. The CFMEU notes that a revised version of the General Regulations is being finalised and that this version now contains a new Chapter (Chapter 2) on General Risk and Workplace Management. Once again, however, this revision fails to clarify the need for utilisation of systematic, comprehensive, risk assessment methodologies.

Too many mineworkers have been killed or injured as a result of inadequate risk assessment. The Moura No.2 and Gretley disasters provide all too clear examples of the consequences that can result when risks are poorly identified and controlled.

²² Core Drafting Instructions, p19.

Regulation 9.2.2 needs to be amended to provide as follows:

“The mine operator of a mine must assess risks to health and safety by means of a systematic, comprehensive, risk assessment methodology which gives adequate regard to both the consequence and the likelihood of particular risks.”

Regulation – 9.2.3

The current wording of Regulation 9.2.3 (1) places no onus on mine operators to eliminate risk.

The CFMEU notes that the most recent versions of both the Model Work Health and Safety Bill, and the General Regulations do place a duty on PCBUs to, in the first instance, “eliminate risks to health and safety, so far as is reasonably practicable”²³.

However, given that processes for control of risk are restated in a mining context in the Model Mine Safety Regulations (an approach strongly supported by the CFMEU), it seems both inconsistent and inappropriate to pass over mine operators’ obligations to eliminate risks in Regulation 9.2.3.

Elimination of risk should be the mine operators’ first point of focus²⁴. That being the case, **Regulation 9.2.3 should begin by requiring mine operators to eliminate risk so far as is reasonably practicable.**

²³ See Section 17 of the Model Work Health and Safety Bill, 23 June 2011; and Regulation 19 of the General Regulations, August 2011.

It may be that the present wording is an inadvertent error. The CFMEU notes that Regulation 9.2.3 is restated in the draft *Roads & Other Vehicle Operating Areas Code of Practice*²⁵, and that, in this restatement, the Regulation is described as placing an obligation on mine operators to eliminate risks. (As noted, this is not the case).

Whatever the basis for the deficiency in the current wording of Regulation 9.2.3 (1) it needs to be remedied.

Regulation 9.2.4

The Core Drafting Instructions provide that relevant parts of a Health and Safety System must be reviewed “after receiving information from a Health and Safety Representative in relation to a health and safety risk under Part 5 of the Principal Act...”²⁶

Regulation 9.2.4 states that Mine Operators are required to review and as necessary revise control measures “if a health and safety representative at the mine requests the review” and/or “if there is *evidence* that a risk control measure does not adequately control the risk”.

The requirement for ‘evidence’ is arguably stronger than the requirement for ‘information’.

²⁴ The primacy of elimination of risk is highlighted in such documents as the *Safety and Health in Mines Convention*, 1995, International Labour Organisation, Article 6.

²⁵ *Draft Roads and Other Vehicle Operating Areas Code of Practice*, Safe Work Australia, July 2011, p8.

²⁶ Core Drafting Instructions, p16.

The current wording of Regulation 9.2.4 needs to be amended to conform with the Core Drafting Instructions. Specifically Regulation 9.2.4 (1) (e) should read as follows “there is information that a risk control measure does not adequately control the risk”.

Regulation – 9.2.6

Given that the WHS Management System is the designated “primary means of ensuring the health and safety of workers at the mine” (to quote regulation 9.2.5), it is critical that the Regulations contain a comprehensive listing of all of mandatory System elements.

As it stands, however, numerous key requirements are missing from Regulation 9.2.6.

There is no requirement for the WHS Management System to “form part of, and be integrated with, the mine’s overall management system”²⁷ as stipulated in the Core Drafting Instructions, and as currently required, for, example, in the Queensland *Coal Mining Safety and Health Act*, 1999²⁸. Without a requirement for integration, history shows that some mine operators will tend to treat WHS activity as a ‘separate’ functional area disconnected, in crucial ways, from the normal day to day operation of the mine. For instance, several Queensland mines are introducing new mining methods to achieve increased tonnage and recovery rates without any apparent consideration of the accompanying safety, health, and environmental issues.

²⁷ Core Drafting Instructions, p14.

²⁸ *Coal Mining Safety and Health Act (Qld)* 1999, Section 62 (2).

Contrary to both the Core Drafting Instructions²⁹, and existing good practice³⁰, there is no requirement that the WHS Management System must include arrangements for managing the risks “arising from the use of contractors”. In the absence of such a requirement there is a very real likelihood that mine operators will not appropriately assess and control the risks which inevitably arise when another company’s workforce, equipment, and/or work methods are imported onto a minesite. There is a tendency in those circumstances for mine operators to make overly positive assumptions about the adequacy of the contracting company’s approach to, for example, induction, training, maintenance, record keeping, hazard identification, risk analysis, incident reporting, and safety leadership.

Despite the fact that the Core Drafting Instructions indicate that a Health and Safety Management System must provide for a “management structure of competent persons” and “timely filling of vacant positions in the management structure”³¹, the words ‘competent’ and ‘timely’ have been omitted from Regulation 9.2.6. Whilst it is understood that approaches to statutory positions vary, there should be no argument from any stakeholder that a minesite’s management structure should be comprised of ‘competent’ persons in, at the very least, the Macquarie Dictionary definition of the word. As far as the need for ‘timely’ filling of vacant positions is concerned, the CFMEU believes that identified key positions within the management structure for the management of work health and safety at a mine should be filled, on an acting basis if necessary, within 7 days. The CFMEU are of the belief the following time frames would be acceptable maximums: persons who develop WHS – 14 days; persons who implement WHS – 7 days; and persons who monitor or supervise – immediately.

At the very least the word ‘timely’ should be included within the Regulation 9.2.6 (c) (i)³².

In addition, the Regulation fails to specify that a WHS Management System must include:

- A description of the hazard identification methodology that will be applied at the minesite
- A description of the resources that will be applied to ensure that the System can be effectively implemented
- The Emergency Response Plan

²⁹ Core Drafting Instructions, p15.

³⁰ See for example, the *Coal Mine Health and Safety Act (NSW)*, 2002 at Section 39.

³¹ Core Drafting Instructions, p15.

³² Just as it is in, for example, Section 37 (7) of the *Coal Mines Health and Safety Act, (NSW)*, 2002.

- Induction, training, and competency requirements
- Processes for incident response and investigation
- Procedures for records management.

Whilst these elements are set out in the Draft *Work Health and Safety Management Systems in Mining Code of Practice*³³ the CFMEU believes that they should be incorporated into Regulation 9.2.6. They are essential requirements for an effective Work Health and Safety Management System.

Regulation 9.2.6 needs to be amended to address the issues outlined above.

The CFMEU also opposes the proposal that exemptions be provided from the WHS Management System requirements set out in Regulations 9.2.5 to 9.2.8. Exemptions from these Regulations are both unnecessary (given that WHS Systems will, by their very nature, already be tailored to the circumstances of the mine site); and inappropriate (there is no sound reason as to why, for example, a worker at a very small mine site should be afforded less protection from serious injury or death than a worker at a larger operation).

Regulation 9.2.7

The Core Drafting Instructions state that Health and Safety Management System review requirements “must specifically include monitoring, assessment, and regular inspection of the working environment of the mine.”³⁴

³³ *Draft Work Health and Safety Management Systems in Mining Code of Practice*, Safe Work Australia, July 2011, p 8-9.

³⁴ Core Drafting Instructions, p16.

Regulation 9.2.7 omits any specific reference to regular inspection of the working environment. Similarly, the new Chapter 2 in the most recent revision of the General Regulations makes no mention of the need for inspections.

It is the CFMEU's strong belief that regular inspection of the working environment is critical to early identification and effective management of risks.

Regulation 9.2.7 should be amended to conform with the Core Drafting Instructions, and existing good practice³⁵.

Regulation 9.2.10

In accordance with our earlier comments on the need to provide clarity for mine operators in relation to their obligation to, in the first instance, eliminate risks so far as is reasonably practicable, **Regulation 9.2.10 (3) needs to be amended to place an explicit obligation on mine operators to develop Principal Mining Hazard Management Plans and control plans that document “how the risks to the health and safety of a person arising from the principal hazard will be eliminated or minimised so far as is reasonably practicable.”³⁶**

The Structure of PMHMP Requirements

³⁵ See for example the *Coal Mining Safety and Health Act (Qld)* 1999, sections 42(f) (iv) & 62.

³⁶ Core Drafting Instructions, p21.

The Regulations separate inrush controls into a *Progress of Workings* Section (9.2.14), and Schedule 9.2 *Principal Mining Hazard Management Plans – Additional Matters to be Considered*. The overall effect is to make requirements for control of inundation and inrush hazards less coherent. Other principal mining hazards are also treated in this piecemeal manner.

It is a fundamental legislative principle that legislation (and regulations) should, in the words of the Queensland Legislation Handbook, “be structured in a logical, user-friendly and accessible way”³⁷. As it stands, the approach taken to principal mining hazards, and PMHMPs, in the Model Mine Safety Regulations does not appear consistent with that fundamental legislative principle. The potential practical consequences of this are that mine operators, and others, may fail to fully comprehend and comply with PMHMP requirements and, this being the case, the very hazards that have the greatest potential to cause recurring and multiple fatalities may not be properly controlled.

The CFMEU believes that by far the better approach would be to take each statutorily prescribed principal hazard and control plans, and to comprehensively describe, in a single location, both the matters to be considered in development of the relevant Plan; and the mandated contents of the Plan.

With respect to content, the CFMEU also strongly believes that there is a need to stipulate, within the Regulations, more specific controls for the management of principal hazards.

This would provide greater protection for mineworkers, and greater clarity for mine operators.

A more specific approach would also be consistent with the Core Drafting Instructions and with the intention of the NMSF group that the Model Mine Safety Regulations would incorporate existing examples of good regulatory practice in the management of principal hazards.

On that basis, the Model Mine Safety Regulations would stipulate that each minesite should have:

³⁷ *Queensland Legislation Handbook*, Queensland Government, 2009, Section 7.2.11.

- A Ground /strata Instability Principal Mining Hazard Management Plan
- An Inundation and Inrush Principal Mining Hazard Management Plan
- A Mine Shafts and Winding Operations Principal Mining Hazard Management Plan
- A Roads, Other Vehicle Operating Areas and Traffic Management Principal Mining Hazard Management Plan
- An Air Quality, Airborne Dust and Other Airborne Contaminants Principal Mining Hazard Management Plan
- A Fire and Explosion Principal Mining Hazard Management Plan including spontaneous combustion
- A Gas Outbursts Principal Mining Hazard Management Plan; and
- An Ionising Radiation Principal Mining Hazard Management Plan.

The CFMEU envisages that each PMHMP requirement would be contained within a specific regulation; and that each regulation would faithfully reflect the content and intent of the Core Drafting Instructions.

The particular content changes that the CFMEU is seeking in relation to individual PMHMPs are set out in the relevant sections below.

Regulation 9.2.14 & Schedule 9.2 (2)

The provisions contained within these sections provide insufficient protection for mineworkers from the risks associated with inundation and inrush. **The CFMEU strongly believes that Section 33 of the *Coal Mine Health & Safety Regulation, (NSW) 2006*, and the full contents of Section 12 of the Core Drafting Instructions³⁸, need to be mirrored within the Model Mine Safety Regulations.** Mine operators must be explicitly required to consider all relevant information concerning the risk of inrush, including information held by the relevant State agencies regarding earlier workings. Mine operators must also be required to document the assumptions made in developing their inundation and inrush PMHMP. The NSW Regulation drew on the lessons learnt from the Gretley disaster; and the findings of the subsequent Inquiry. Those lessons should be applied to all mines.

³⁸ Core Drafting Instructions, pp31 & 32.

In addition, for clarity's sake, the Regulation should be retitled "Inundation and Inrush"; the current title is confusing and inappropriate.

Regulation 9.2.15 & Schedule 9.2 (3)

The Core Drafting Instructions state that mine operators "must be required to develop a principal hazard management plan for the purposes of eliminating and minimising risks arising from the design, construction, installation, maintenance, repair and use of mine shafts and winding operations."³⁹

There is no explicit reference to the need for controls applicable during 'design', 'construction', 'installation' and 'maintenance' in those Regulations that deal with mine shafts and winding.

In addition, as it stands Regulation 9.2.15, and Schedule 9.2 (3), (and the accompanying draft *Underground Winding Systems Code of Practice*) require amendment if underground mineworkers are to be adequately protected when winding systems are operational.

The CFMEU believes the following amendments are essential:

- **Regulation 9.2.15 (1) (c) should be replaced with a requirement for "two independent braking systems that can bring the winding system to rest".**

³⁹ Core Drafting Instructions, p33.

- Regulation 9.2.15(2) should include a requirement that “mine winder controls and braking systems be designed in accordance with fail safe principles”.
- Specific timeframes for testing of ropes, brakes, and structural integrity should be incorporated into Regulation 9.2.15 (2). These are not matters that are suitable for individual interpretation by mine operators.
- For clarity’s sake Schedule 9.2 (3) (f) should explicitly refer to “failure of the electrical control systems”.
- Schedule 9.2.(3)(f) (i) should read as follows “all ropes required in the safe operation of a winder including, guide ropes, rubbing ropes and balance ropes”.
- The reference in 9.2.(3)(f)(iii) to ‘drum slip’ needs to be replaced with the term ‘rope slip’.
- Given the high potential for injury during maintenance activities there should be a new 9.2.(3)(j) as follows “competencies of maintenance personnel”.

In addition, and again in accordance with the Core Drafting Instructions, the matters set out in Schedule 9.2 (3) need to be incorporated into the Shafts and Winding PMHMP, rather than merely ‘considered’.

Regulation 9.2.16

The current Regulation 9.2.16 moves immediately to assume a circumstance where it is not reasonably practicable for a mine operator to eliminate risks to health and safety associated with the movement of mobile plant at the mine.

The CFMEU is not arguing that it is reasonably practicable to eliminate **all** risks associated with mobile plant. However, it may indeed be very practicable to eliminate **some** of those risks.

In accordance with previous comments, **Regulation 9.2.16 needs to place an explicit duty on mine operators to eliminate the risks associated with mobile plant, so far as is reasonably practicable.**

As well, the Regulation needs to specify additional contents for the Roads, Other Vehicle Operating Areas and Traffic Management PMHMP. These requirements should be taken from Codes of Practice and current state legislation⁴⁰.

Regulation 9.2.17

Once again this section suffers from the absence of an explicit duty on mine operators to eliminate the risk of dust explosion so far as is reasonably practicable.

The approach taken in the Regulation is contrary to the specific provisions contained within the Core Drafting Instructions which state that principal hazard management plans must include measures to eliminate or minimise the risk of dust explosion⁴¹.

The dust explosion Regulation is also one which, in the CFMEU's view, needs to be considerably more detailed.

It must reflect the actual wording of the Core Drafting Instructions, as well as the NMSF intent that specific dust explosion provisions contained within existing state regulations would be incorporated into the Model Mine Safety Regulations.

⁴⁰ See for example, Section 128, of the *Coal Mine Safety and Health Regulation (Qld)*, 2001.

⁴¹ Core Drafting Instructions, p40.

In accordance with the Core Drafting Instructions, Regulation 9.2.17 (2) (c) needs to be augmented by the inclusion of a requirement that mine operators “remove excessive coal dust accumulations on roadway and other surfaces in the coal mine roadways”.⁴²

As well, “principal hazard management plans that apply to coal mines **must also be required to include a standard operating procedure** [emphasis added] which requires the mine operator to inspect, sample, and analyse roadway dust layers, including laboratory analysis for incombustible material content at regular intervals; and apply stonedust or another explosion inhibitor for suppressing coal dust explosion”.⁴³

Finally, the specific detail contained within the *Coal Mining Safety and Health Regulation (Qld) 2001* at sections 300 – 303 need to be included within Regulation 9.2.17 so far as it applies to coal mines. Those provisions were devised with the benefit of the learnings from numerous mining fatalities. They need to be mandated for the benefit of current and future coal mineworkers - regardless of their location.

Regulation 9.2.17 needs to be amended in accordance with points outlined above.

Additional Content of the Fire and Explosion PMHMP/Schedule 9.2 (6)

The Core Drafting Instructions provide that in developing a Fire and Explosion PHMP mine operators must incorporate “details of the type and location of the systems for early detection and suppression of fire (including remote monitoring systems) and of the equipment for fire fighting in the mine”.⁴⁴ This provision has been omitted from the Model Mine Safety Regulations.

⁴² As per the Core Drafting Instructions pp 40 & 41.

⁴³ Core Drafting Instructions, p40.

⁴⁴ Core Drafting Instructions, p40.

In addition, and again in accordance with the Core Drafting Instructions, the matters set out in Schedule 9.2 (6) need to be incorporated into the Fire and Explosion PMHMP, rather than merely `considered`.

As well, the Regulations need to include specific provisions covering explosion barriers, (stonedust and/or water). The CFMEU suggests that these provisions be derived from existing state regulations.

The Regulations also need to be amended to incorporate all provisions relating to the content of Fire and Explosion PHMPs outlined in the Core Drafting Instructions.

Content of the Ground/Strata Instability PMHMP/Schedule 9.2 (1)

The Core Drafting Instructions set out the minimum matters which must be considered when developing Ground/Strata Instability PMHMPs. Several of these matters have not been included in either Part 9.2 or Schedule 9.2 (1). The matters omitted are as follows:

- “Stope and pillar dimensions in an underground mine”
- “The use of appropriate equipment and procedures for scaling”
- “The proper design, installation and quality of rock support and reinforcement”
- “The timing of ground and strata support, to take account of rock conditions and behaviour.”⁴⁵

As well Schedule 9.2 (1) (d) (e) and (h) need to be amended to fully reflect provisions 11.3 (11), (12) and (7) of the Core Drafting Instructions.

⁴⁵ Core Drafting Instructions, p30.

The CFMEU views all of these matters as critical items for consideration in the development of a Ground/Strata Instability PMHMP.

The Model Mine Safety Regulations should be amended to fully reflect the Core Drafting Instructions in relation to the development of Ground/Strata Instability PMHMPs.

Regulation 9.2.18

The CFMEU supports the inclusion of a requirement in the Regulations for mine operators to prepare a ventilation control plan. However, as mentioned previously, it is important for the control plan concept, and the relationship between control plans and Principal Mining Hazard Management Plans to be clearly defined. It is also highly desirable for both 'Core' and 'Non-Core' jurisdictions to use the same terminology for what will essentially be the same type of document, and, on that basis, the CFMEU proposes that Regulation 9.2.18 refer to the preparation of a 'ventilation principal control plan'.

It is also essential that core elements of a mine's ventilation control plan be set out in the Regulations. These are not matters that can appropriately be left to Codes of Practice.

The Core Drafting Instructions prescribe the contents of the Ventilation Plan⁴⁶. **These provisions need to be inserted into Regulation 9.2.18.**

⁴⁶ Core Drafting Instructions, p38.

However, it is important to note that 15.1 (7) (b) of the Core Drafting Instructions, which provides that the mine operator shall “prevent intake air from travelling across the face of a permanent seal at a coal mine” needs to be replaced with the wording contained within the *Queensland Coal Mine Safety and Health Regulation, 2001* sections 346 and 348. To do otherwise, would be to create a situation where some existing mines would be unable to operate.

Regulation 9.2.19

The CFMEU believes that the current wording of Regulation 9.2.19 is both impractical, and insufficient.

The Core Drafting Instructions proposed that mine operators be required to “ensure so far as is reasonably practicable that the health and safety risks associated with extreme temperatures are eliminated and where not reasonably practicable to eliminate are minimised”⁴⁷. The intention of the NMSF group was that this statement would be supported, in the Regulations, by specific requirements on heat stress management.

Regulation 9.2.19 as it stands arguably places an **absolute** requirement on mine operators to prevent heat stress; without providing for any specific limitations on working conditions, or any other specific controls.

⁴⁷ Core Drafting Instructions, p44.

The Regulation should be amended to reflect the wording contained in the Core Drafting Instructions; and should be augmented by inclusion of the basic requirements for heat stress management outlined in the *Coal Mining Safety and Health Regulation 2001* (Qld) Section 369.

Regulations 9.2.20 – 9.2.26

The Core Drafting Instructions stated that the Mine Safety Regulations “must require that a principal hazard management plan be developed and implemented for air quality, airborne dust and other airborne contaminants at the mine.”⁴⁸ The Core Drafting Instructions went on to specify the mandated elements of the plan.

The CFMEU notes that sections 9.2.20 – 9.2.26 set out a range of requirements for air quality management that are consistent with the *Core Drafting Instructions*. However, for the purposes of providing clarity to mine operators and mine workers, **the CFMEU believes that the Model Mine Safety Regulations need to, in accordance with the Core Drafting Instructions, explicitly outline the mandated contents of the Air Quality, Airborne Dust, and Other Airborne Contaminants PMHMP.**

In addition, the Core Drafting Instructions provide that “in the event that analysis reveals a concentration of airborne dust in excess of the prescribed limit, the mine operator must: (a) inform persons from whose breathing zone the same was taken; (b) take steps to ensure the concentration of dust in circumstances similar to those in which the sample was taken is reduced; and (c) arrange for the collection and analysis, by another licensed and independent person, of a further sample in circumstances similar to those in which the original sample was

⁴⁸ Core Drafting Instructions, p37.

taken.”⁴⁹ These provisions have not been incorporated into the Model Mine Safety Regulations. Regulation 9.2.24 relates only to the mine operator’s duty to notify workers where excessive methane levels exist. The general provision at Regulation 9.2.27 (2) (b) to the effect that mine operators must make air monitoring records “readily accessible to workers” does not provide the same level of protection for mineworkers.

The CFMEU believes that Regulation 9.2.24 needs to be amended to fully incorporate the provisions contained within the Core Drafting Instructions.

There are also numerous errors in the current wording relating to air quality, airborne dust, and contaminants.

To ensure all major dusts are adequately covered, Regulation 9.2.21 (2) (b) needs to include a new (iii) “silica – 0.1mg per cubic metre of air”.

The CFMEU is also opposed to the current wording of 9.2.21 (3) and (4) which, taken together, appear to indicate that so long as personal protective equipment is supplied, mineworkers can be exposed to levels of dust which exceed the levels prescribed in 9.2.21 (b). This is clearly unacceptable. **Regulation 9.2.21 (3) needs to be deleted. The words “if it is not reasonably practicable to comply with this regulation” need to be removed from Regulation 9.2.21 (4).**

In addition Regulation 9.2.22 (2) (b) needs to be drafted to take account of the reality that underground coal mines cannot meet the standards outlined in the General Regulations. For example, there is no suitable gas detection equipment available for use in underground coal mines which could measure all airborne contaminants. **The Regulation needs to reflect the *Coal Mine Safety and Health Regulation (Qld)* 2001 Sections 343, 359 and 361 and Schedule 6.**

⁴⁹ Core Drafting Instructions, p39.

There is also a fundamental error in Regulation 9.2.23 (2). Most underground coal mines could not possibly comply with this provision.

Regulation 9.2.30 and Schedule 9.3

The Regulation and Schedule refer to 'prohibited uses'. However the Issues Paper, at Attachment 2 sets out a 'Prohibited Items Schedule'. The CFMEU agrees with the view that some items or substances may be prohibited absolutely, while others will only be prohibited for particular uses.⁵⁰ **For clarity's sake it is suggested that Regulation 9.2.30 and Schedule 9.3 be amended to refer to 'prohibited items and uses'.**

Insertion of a minimum age for workers underground

The Issues Paper suggests that consideration should be given "as to whether the draft model mines regulations should prescribe a minimum age for workers to be able to carry out work underground"⁵¹.

⁵⁰ Issues Paper, p24.

⁵¹ Issues Paper, p12.

In 1965 the International Labour Organisation adopted the *Minimum Age (Underground Work) Convention* which stipulates that persons under the age of 16 years shall not be employed or work underground in mines.⁵² Existing Australian mining legislation reflects the ILO Convention. The CFMEU can see no valid argument for any alternative approach.

In addition, the CFMEU can see no logical reason for the prohibition being confined to underground work.

The Model Mines Regulations should prohibit the employment of persons under the age of 16 years either underground or in open cut operations.

Insertion of mine site electrical safety regulations

The Core Drafting Instructions state that “mine operators must be required to eliminate and if it is not reasonably practicable to do so, to minimise electrical health and safety risks arising in mining operations including [through] the use of hazardous zones to isolate electrical plant from certain parts of the mine where they present a risk to health and safety”.⁵³ It is also noted that mining electrical safety provisions will need to be considered in the light of electrical safety provisions contained within the general regulations “to identify gaps that may exist for mine safety specific electrical issues”.⁵⁴

⁵² *Minimum Age (Underground Work) Convention*, 1965, International Labour Organisation, Article 2.

⁵³ Core Drafting Instructions, p42.

⁵⁴ Core Drafting Instructions, p42.

The CFMEU has carefully reviewed the General Regulations for applicability to mining circumstances. This review has shown that a number of the general regulations do not readily transfer to a mine site (how, for example, does the definition of 'electrical equipment' in Regulation 4.7.2 (2) relate to an electric shuttle car?).

The review has also underlined the importance of providing additional, mine site specific, electrical regulations to provide adequate protection for mineworkers. It is indisputable, for example, that use of electrical equipment underground brings with it specific hazards that are not envisaged by, or encompassed by, the General Regulations.

The CFMEU suggests that existing mining specific electrical safety requirements in state legislation be the basis for a new Regulation in the Model Mine Safety Regulations explicitly dealing with minesite electrical safety; and that the NMSF be requested to urgently agree on the content of the new Regulation.

Regulations 9.2.32 – 9.2.41 and Schedule 9.4

The CFMEU has a number of concerns with the current structure and contents of emergency planning and response provisions contained within the Model Mine Safety Regulations.

In common with the provisions on PMHMPs, the CFMEU believes that the current separation of emergency planning and response into Regulations 9.2.32 – 9.2.41, and Schedule 9.4, is not conducive to providing mine operators and others with clarity about their obligations, or with ensuring effective emergency response. All provisions relating to emergency planning and response need to be brought together in the one location.

There are also serious deficiencies in the content of the emergency planning and response provisions.

Withdrawal of Persons

At present there is no requirement in the Model Mine Safety Regulations for a minesite to identify conditions for precautionary withdrawal of personnel from the mine. (Schedule 9.4 5.1 focuses solely on emergency evacuation).

In 1994 11 Queensland mineworkers died because of a mine operator's ultimate failure to withdraw personnel from the Moura No.2 mine whilst there was a potential for an explosion. The Warden's Court Inquiry into the disaster found that "there was no protocol at Moura No 2 for the withdrawal of persons from the mine in response to potential dangers. This left consideration of questions of withdrawal to those officials who happened to be on duty at any particular time. In the actual event the question of withdrawal was immersed in uncertainties with regard to the state of the mine and, in any case, appeared to have been left largely to the opinion of the middle ranking official who happened to be on duty. Any attempts that official made to obtain guidance from more senior management were not fruitful and, ultimately, any question of staying out of the mine was left to the workforce. This situation is totally unacceptable".⁵⁵

The Inquiry went on to recommend "that mines be required to develop and implement protocols, as a statutory requirement, for the withdrawal of persons when conditions warrant such action".⁵⁶

The Queensland *Coal Mining Safety and Health Act 1999* now contains provisions which specify the circumstances under which personnel must be withdrawn from a mine as a precautionary measure; and which set out the conditions for re-entry⁵⁷. The NSW *Coal Mining Health and Safety Regulation 2006* provides that the health and safety management system for a coal mine "must include conditions (withdrawal

⁵⁵ *Report on an Accident at Moura No.2 Underground Mine on Sunday 7 August 1994*, Warden's Inquiry Report, p68.

⁵⁶ Ibid.

⁵⁷ See Section 273.

conditions) under which people are to be withdrawn, and to remain withdrawn, from the coal operation or parts of the coal operation as a precautionary measure when conditions of risk or a threat to health or safety (not amounting to an emergency) warrant such action.”⁵⁸ Both the Qld and the NSW Acts also provide an explicit right for mineworkers to withdraw themselves to a position of safety if a mineworker believes that their safety is endangered.⁵⁹

The CFMEU notes that the Non Core Drafting Instructions do state that a minesite Emergency Response plan must provide for “identifying conditions for withdrawal from a mine which must include circumstances where there is an imminent risk to Health and Safety”.⁶⁰

It is the CFMEU's very strong belief that all mineworkers, regardless of the type of mine they work in, or their location, should be protected by inclusion of an obligation on mine operators to put in place a plan for precautionary withdrawal of mineworkers. If such a plan had been in place on 7 August 1994, 11 men may not have gone underground to their deaths. It is not sufficient to leave withdrawal of persons as a matter only to be regulated in jurisdictions with Non-Core legislation, or for inclusion in a Code of Practice.

Division 4 of the Model Mine Safety Regulations needs to be amended to require:

- **Mine operators to include a plan for precautionary withdrawal of mineworkers within their Emergency Response Plan**
- **The withdrawal plan to include documented Trigger Action Response Plans for both withdrawal and re-entry**
- **Withdrawal to a place of safety (as defined)**
- **Withdrawal to be mandated in certain circumstances – these should reflect the provisions in the Queensland *Coal Mining Health and Safety Act* 1999 and the findings of the Moura No.2 Warden’s Court Inquiry.**
- **An explicit right for a mineworker to withdraw to a place of safety if the mineworker reasonably believes his health or safety is seriously endangered.**

⁵⁸ See Section 13 (1) (g).

⁵⁹ This is contained in the *Coal Mining Safety and Health Act (Qld)* 1999 at Section 274, and the *Coal Mine Health and Safety Act (NSW)* 2002 at Section 60.

⁶⁰ Non Core Drafting Instructions, p124.

Continuous Rescue Operations

The Core Drafting Instructions state that an Emergency Response Plan must provide “for a suitable number of trained persons and maintained equipment to allow for continuous rescue operations to take place at the mine.”⁶¹

There is no mention of the need for a capacity for continuous rescue operations in the Model Mine Safety Regulations. (It may be that Regulation 9.2.32 (3) (a) was meant to cover this point but, if so, the wording of this clause is deficient). This situation needs to be rectified. As recent events have well demonstrated, (see Beaconsfield for example), rescue operations may have to continue over many days and even weeks. It is essential that all mines have a plan which considers how continuous rescue operations might be provided.

Regulation 9.2.32 (3) needs to be amended to conform with the Core Drafting Instructions.

Annual Review

The Core Drafting Instructions provided that an Emergency Response Plan must be reviewed and tested at least annually.⁶²

The CFMEU believes that Regulation 9.2.36 needs to be amended to reflect the Core Drafting Instruction requirement in relation to annual review.

⁶¹ Core Drafting Instructions, p22.

⁶² Core Drafting Instructions, p23.

Emergency Exits

At present, Regulation 9.2.37 (3) would appear to require mine operators to provide 3 or 4 means of egress from an underground mine. Were this wording to be retained, it could have the practical effect of rendering many existing mines inoperable.

The CFMEU notes that the Core Drafting Instructions stated that mine operators must ensure “that there are at least two exits from every underground Mine at any one time, each of which is connected to separate means of egress to the surface.”⁶³

The CFMEU believes that the better wording is that contained within Regulation 296 (1) of the *Coal Mining Safety and Health Regulation (Qld) 2001* namely that the mine operator must “ensure the mine has at least 2 trafficable entrances (escapeways) from the surface that are separated in a way that prevents any reasonably foreseeable event happening in 1 of the escapeways affecting the ability of persons to escape through the other escapeway.”

The CFMEU would support revision of Regulation 9.2.37 (3) to reflect Regulation 296 (1) of the *Coal Mining Safety and Health Regulation (Qld) 2001*.

Contents of Emergency Response Plan

The Core Drafting Instructions provide that a minesite’s Emergency Response Plan must be “commensurate with the nature, size, complexity and risks associated with the mine”⁶⁴. This wording has not been incorporated into the Model Mine Safety Regulations.

⁶³ Core Drafting Instructions, p23.

The Core Drafting Instructions also state that the Regulations should stipulate that an Emergency Response Plan “must provide for documented triggers for the activation⁶⁵” of the Plan. This provision has been omitted from the Model Mine Safety Regulations. The CFMEU sees this as a serious concern. As the events at the Moura No. 2 mine demonstrated, leaving emergency decision making to the judgement of those on site at the time, can be a recipe for disaster. The more rigour introduced to the activation of emergency response; the more likely it is that mineworkers will be protected by timely intervention.

The CFMEU believes that Division 4 should be amended to fully reflect the Core Drafting Instructions in relation to the contents of a mine’s Emergency Response Plan.

Provision of Emergency Response Equipment

The Core Drafting Instructions provide that mine operators should ensure that rescue equipment is provided for persons in an underground part of a mine. This is to include providing self-rescuers, “suitable resuscitation equipment and persons qualified to use it, and an alarm system and procedure for activating it.”⁶⁶

The CFMEU does not believe that Regulations 9.2.38, and 9.2.40, adequately reflect the wording and intent contained within the Core Drafting Instructions.

The Regulations need to clearly provide for caches of self-rescuers, resuscitation equipment, and alarm systems underground.

⁶⁴ Core Drafting Instructions, p22.

⁶⁵ Core Drafting Instructions, p22.

⁶⁶ Core Drafting Instructions, p22.

Insertion of First Aid Provisions

The Core Drafting Instructions state that “the Mine Safety Regulations must require that mine operators ensure that appropriate first aid equipment, facilities and services are provided at the mine at all times when persons are working at the mine.”⁶⁷ The Core Drafting Instructions go on to stipulate how ‘appropriate’ equipment, facilities and services are to be determined; and to set out further specific first aid requirements.

At present, the Model Mine Safety Regulations do not contain any specific requirements in relation to the provision of first aid (other than stipulating in Schedule 9.4,4.1 (a) that an Emergency Plan must include reference to onsite emergency resources including first aid equipment, facilities, services and personnel).

The CFMEU recognises that the General Regulations contain a duty to provide first aid, (at Part 3.3) however this duty is expressed in broader terms than those used in the Core Drafting Instructions and does not incorporate most of the specific first aid requirements set out in the Drafting Instructions.

The CFMEU believes that the Model Mine Safety Regulations need to be amended to accurately reflect the provisions of the Core Drafting Instructions in relation to first aid.

⁶⁷ Core Drafting Instructions, p50.

Part 9.3

Restructure of Part 9.3

As indicated in comments on Part 9.1, the CFMEU believes that Part 9.3 needs to be restructured, to be consistent with the Core Drafting Instructions, into three sections: Fitness for Work; Health Surveillance; and Health Monitoring. The Health Surveillance section needs to mirror the Core Drafting Instructions.

Regulation 9.3.1

The CFMEU strongly believes that the Fitness for Work provisions in the Model Mine Safety Regulations should be expanded to set out, in more detail, the scope of the FFW component of the mine's WHS Management System. Following the approach taken in the *Coal Mining Safety and Health Regulation* (Qld) 2001⁶⁸ mine operators should be required to incorporate fatigue related education; employee assistance; maximum shift lengths, number and length of rest breaks in a shift; and the maximum number of hours to be worked in a week or roster cycle; into their WHS Management System. There have been numerous instances when fatigue has played a primary or secondary role in mining accidents. It is important to ensure that all mineworkers receive core protections against the effects of fatigue.

⁶⁸ See Section 42 (2).

The CFMEU strongly opposes the view, as expressed in the Issues Paper, that fatigue regulations may be unnecessary on the basis that “these kinds of issues” are already “required by PCBU’s as a matter of workplace policy.”⁶⁹

Regulation 9.3.2

For the reasons outlined in comments on Regulation 9.1.9, Regulation 9.3.2 (2) needs to be deleted and replaced with provisions relating to alcohol and drug testing. To leave the Regulations as they stand would be to invite abuse by mine operators, and disputation with mineworkers.

Insert new Regulations on drug and alcohol testing

The Core Drafting Instructions clearly provide that the Model Mine Safety Regulations must specify:

- That “arrangements for alcohol and drug testing regimes must be reached through an agreement between the Mine Operator and a majority of workers at the mine”
- That in the event that agreement cannot be reached within a reasonable timeframe “the Mine Operator will determine the regime that will apply” with the decision being “the subject of the Issue Resolution provisions under the Principal Act (Part 5(consultation, representation and participation) Division 5 (issue resolution)).

⁶⁹ Issues Paper, p15.

- That “in relation to any proposed drug testing, in the event that agreement cannot be reached within a reasonable timeframe...the Mine Safety Regulations are to provide for a testing regime specified in a schedule.”⁷⁰

The approach outlined above will provide a much more credible and reliable mechanism for protecting mineworkers from the health and safety risks arising from the impact of alcohol and drugs than the existing Regulation 9.3.2(2).

With respect to the default drug testing regime, the CFMEU would support inclusion of the approach taken in the existing Queensland Legislation and Regulations, and currently incorporated into the Non-Core Drafting Instructions.⁷¹

The Model Mines Safety Regulations need to be amended to incorporate drug and alcohol testing regimes.

Regulation 9.3.3

This Regulation needs to be replaced with wording consistent with sections 39 and 40 of the *Coal Mine Safety and Health Regulation (Qld) 2001*.

⁷⁰ Core Drafting Instructions, p27.

⁷¹ Non-Core Drafting Instructions, p191.

Regulation 9.3.4

Regulation 9.3.4 (3) (a) currently provides that health monitoring must be carried out “**under the supervision**” of a registered medical practitioner. The Core Drafting Instructions state that medical examinations must be carried out **by** a registered medical practitioner.

This is a fundamental discrepancy. The CFMEU can see no valid reasons for medical examinations to be conducted by anyone other than a registered medical practitioner. By contrast, the CFMEU would have no difficulty with other personnel being involved in aspects of health surveillance, and health promotion.

Once again, the CFMEU strongly believes the Model Mine Safety Regulations need to be amended to define, and separately provide for, health monitoring and health surveillance. **Regulation 9.3.4 (3) needs to be amended to provide that medical examinations must be carried out by a registered medical practitioner.**

In addition, Regulation 9.3.4 (3) needs to specify that the scope and methodology of health monitoring must conform to an approved Schedule under the Regulations. Health monitoring must also be restricted to work related hazards.

Part 9.5

Insertion of a requirement for mine operators to obtain historical survey plans

As the Core Drafting Instructions state “the need for accurate survey plans of mines to be prepared and kept was highlighted by the events at the Gretley incident in New South Wales.”⁷²

The Gretley disaster also highlighted the importance of obtaining, and assessing for accuracy, historical survey plans.

The Core Drafting Instructions provided that “mine operators must be obliged to obtain a copy of all historical survey plans from relevant personsbefore commencing mining operations.”⁷³ **This provision needs to be incorporated into Part 9.5.**

Part 9.6

Insertion of a requirement for investigation of a notifiable incident

⁷² Core Drafting Instructions, p45.

⁷³ Core Drafting Instructions, p45.

The Core Drafting Instructions state that “following a notifiable incident, a mine operator must be required to investigate the incident to a reasonable extent. The duty to investigate incidents must include indentifying any key safety issues and recommendations arising from the incident and taking action to review and revise the health and safety management system (or its relevant parts) accordingly.”⁷⁴

Regulation 9.2.4 (b) does stipulate that a mine operator must review and as necessary revise risk control measures when “a notifiable incident occurs at the mine.”

However, there is no provision in the Model Mine Safety Regulations at present which stipulates the mine operator’s duty to investigate. **The Regulations need to be amended to comply with the Core Drafting Instructions in relation to investigation of notifiable incidents.**

Part 9.7

Regulation 7.1

The Core Drafting Instructions provide that:

- “The mine record duty must include that the mine record is easily accessible to workers at the mine”; and
- “When a new mine operator is appointed, the previous mine operator must provide the mine record of the previous seven years to the new mine operator”⁷⁵.

⁷⁴ Core Drafting Instructions, p54.

Neither of these provisions are currently included in the Model Mine Safety Regulations. (The CFMEU notes that Regulation 9.7.1 (3) does provide that “a record that forms part of the mine record must be kept...for 7 years from the date the record was made”; but does not consider that this adequately reflects the Core Drafting Instructions with regard to handover of the mine record).

The CFMEU believes that Regulation 7.1 needs to be amended to fully reflect the Core Drafting Instructions in relation to the Mine Record.

Other Comments

National Mine Safety Database

The Core Drafting Instructions stated that the Model Mine Safety Regulations “must impose an obligation on mine operators to collect, maintain and provide to the regulator information in relation to all injuries, diseases and high potential incidents to support the development and maintenance of the National Mine Safety Database as set out in the National Mine Safety Framework Implementation Plan. The purpose of the National Mine Safety Database is to facilitate reliable comparability of industry and jurisdictional data in order to improve health and safety.”⁷⁶

The Drafting Instructions went on to set out, in an accompanying Schedule, the content required in the National Mine Safety Database.

⁷⁵ Core Drafting Instructions, pp 47 & 48.

⁷⁶ Core Drafting Instructions, p28.

The CFMEU is extremely disappointed that these provisions, which had been agreed by Ministers, have not yet been adopted in the Model Mine Safety Regulations.

All stakeholders should be focused on safety improvement. Collection of the same data from all mines across the country will allow for the establishment of a credible, consistent, mine safety data set. Creation of a National Mine Safety Dataset will allow regulators, the mining industry, mining unions, mineworkers, and the general public to form a more accurate view of areas of good practice, and opportunities for improvement. Over time, it will also foster the development of targeted safety intervention strategies.

Experience has shown that without legislative backing, it is extremely unlikely, in fact it is inconceivable, that all stakeholders will voluntarily agree to provide the same data to all regulators.

The CFMEU notes that the current Model Mine Safety Regulations do contain, at Schedule 9.1, a listing of information to be included in a mine quarterly report. However, this listing is far less comprehensive than that outlined in the Core Drafting Instructions. Schedule 9.1 does not include, for example, a requirement to supply details of an injured person's "shift start time, shift finish time, and number of hours worked prior to the incident".⁷⁷

The CFMEU strongly believes that the Model Mine Safety Regulations need to be amended to reflect the Core Drafting Instructions in relation to collection of statistics for a National Mine Safety Database.

Exemption From General Regulations

⁷⁷ Core Drafting Instructions, p58.

The CFMEU strongly believes that the Model Mine Safety Regulations need to incorporate a provision allowing exemption from the General Regulations where, in the opinion of the Regulator, those Regulations cannot safely or reasonably be applied to all, or some, minesites.

Review of the General Regulations has shown, for example, that Regulation 3.2.3 'Air supplied respiratory equipment' cannot safely or practicably be applied to underground coal mines. As previously indicated, many of the electrical provisions in the General Regulations cannot readily be applied to minesites.

Failure to allow for an exemption from the General Regulations would place mine operators in the ludicrous position of having to comply with provisions that have the ultimate effect of increasing health and safety risks to mineworkers.

These submissions have been written for the CFMEU by S Johnson, with technical direction from the CFMEU by G Dalliston, C Gilbert, I Murray, K Shaw, T Schram and A Vickers.

An evaluation of the data analysis contained within pages 65 to 69 of the *Consultation Regulation Impact Statement for model work health and safety regulations and Codes of Practice for mines* prepared by Deloitte Access Economics for Safework Australia.

Prepared by Professor David Cliff

Minerals Industry Safety and Health Centre, Sustainable Minerals Institute, University of Queensland

For

Construction Forestry Mining and Energy Union

October 2011



BACKGROUND:

On 18 October 2011 Professor Cliff was approached by the CFMEU to provide an independent evaluation of the data analysis and conclusions derived from that data analysis described in pages 65 to 69 of the *Consultation Regulation Impact Statement for model work health and safety regulations and Codes of Practice for mines* document released by Safework Australia on 7 October 2011.

SUMMARY:

- It is not appropriate to use Workers' Compensation data for this type of analysis.
- When lost time injury statistics are used for analysis, there is no indication that core states perform any better than non-core states, indeed for most sectors they appear to perform slightly worse.
- It is important to recognise that there is significant variation between the various mining sectors and each needs to be viewed separately. It is not appropriate to compare a state which is principally an open cut metalliferous state (WA) with a state that is principally coal oriented (NSW) or one that is a mix of metalliferous and coal (QLD).
- Mining OHS is not solely driven by the legislative environment of the mine site. Mining companies operate across jurisdictions and derive their management systems and approaches to OHS across all sites. If anything mining companies are most influenced by the legislation of the state(s) that contain the bulk of their operations.
- The core states (VIC, SA, NT and TAS) only represent 11 % of the mining workforce.
- The major impact on reduction in LTIFR may be more closely associated with the industry and regulatory response to major mining disasters, than changes in legislation.

The key charts that are used to develop the argument in chapter 6 are depicted below. They are derived from Workers Compensation data stored on the national database NOSI. There are a number of problems in using the NOSI data in this way. Some of these are acknowledged in the report. Of particular concern is the lumping of all mining together rather than acknowledge that each state has a different mix of coal, metalliferous and extractive mining. In addition across the states there is a different split between open cut and underground mining. However the problems go deeper than this. There are many problems in using WC data including:

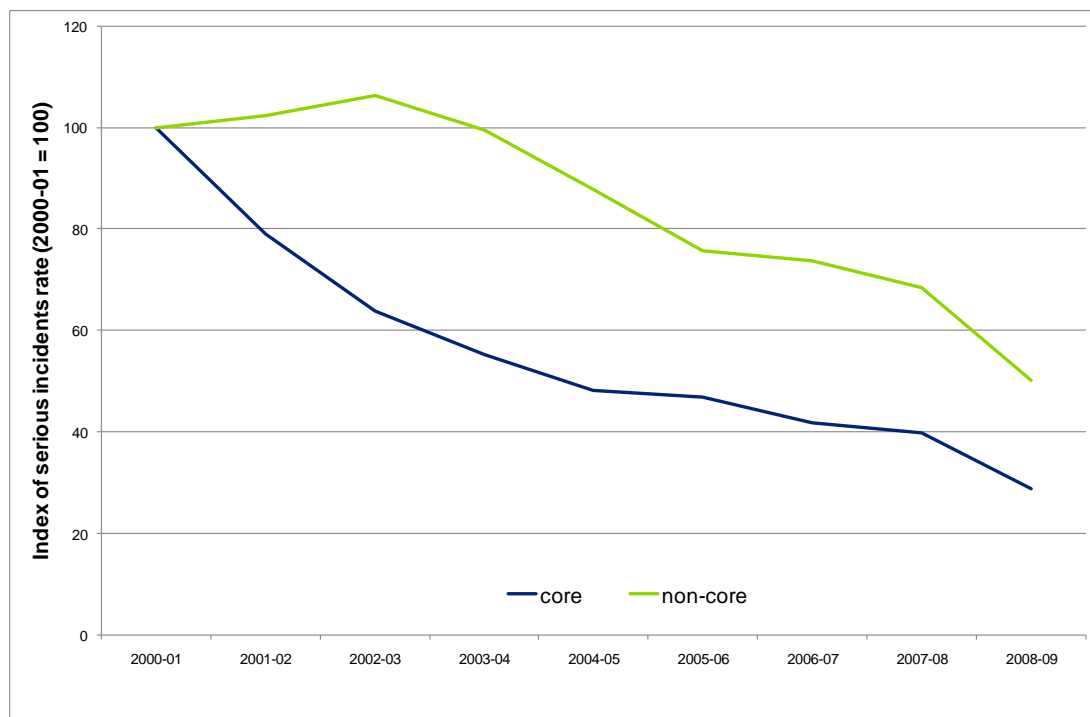
- WC data are based upon industry classification rather than site so not all mining incidents are captured eg where the worker is employed by an employer not classified as being mining related accidents will be put into that other sector.
- WC coverage is limited to employees, with incomplete capture of contractors, very little on subcontractors and none for self employed. The mining sector is increasingly using contractors and turning to various forms of contract employment.
- In the mining sector many contracting companies work across a number of sectors and workers may work across a number of sites thus complicating the claims process.
- Major mining companies may be self-insurers and previous studies have found instances where injuries are managed via sick leave rather than the WC system.
- There is no uniform definition and capture of WC data between the states.
- The definition of mining varies from state to state, with some states not including extractive industries as mines and others including them as mines.

Chart 6.1: Mine safety by jurisdiction



Note: core states are in green, non-core states are blue
 Source: Safe Work Australia National Online Statistics (<http://nosi.ascg.gov.au/Default.aspx>)⁷⁸

Chart 6.3: Index of safety improvements, by mining regime

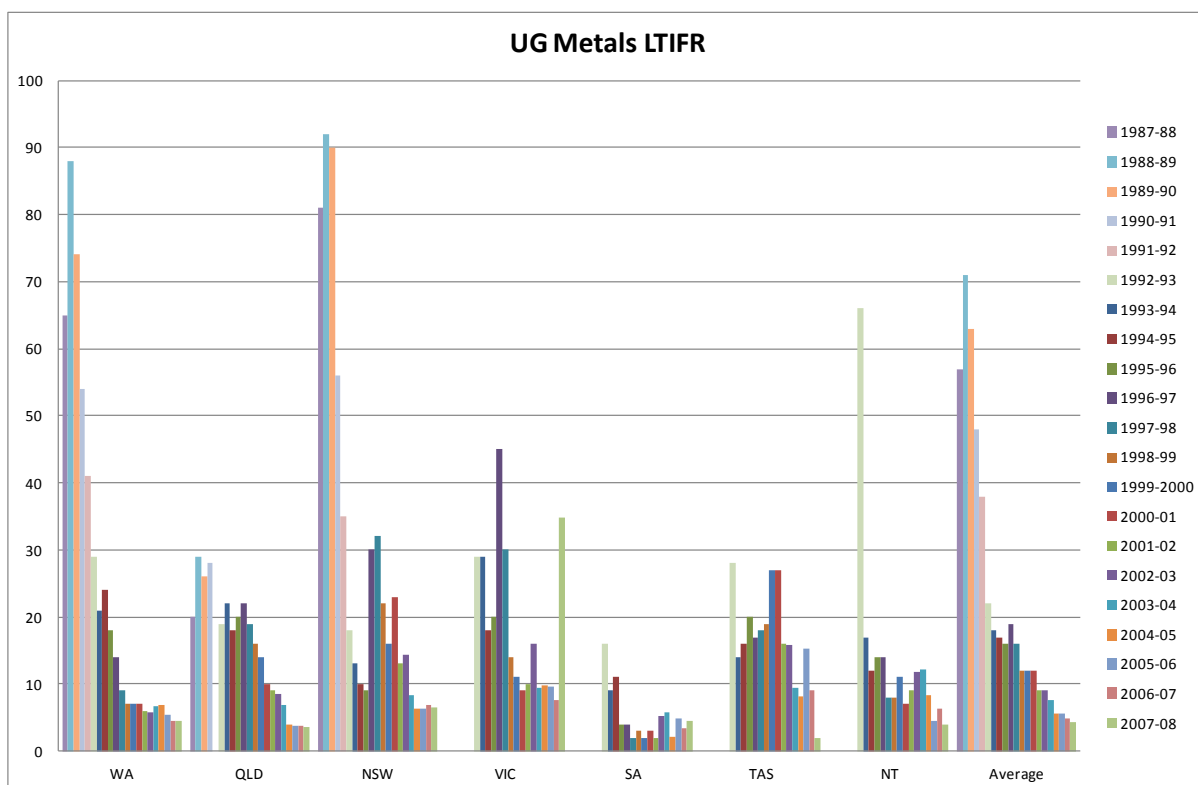
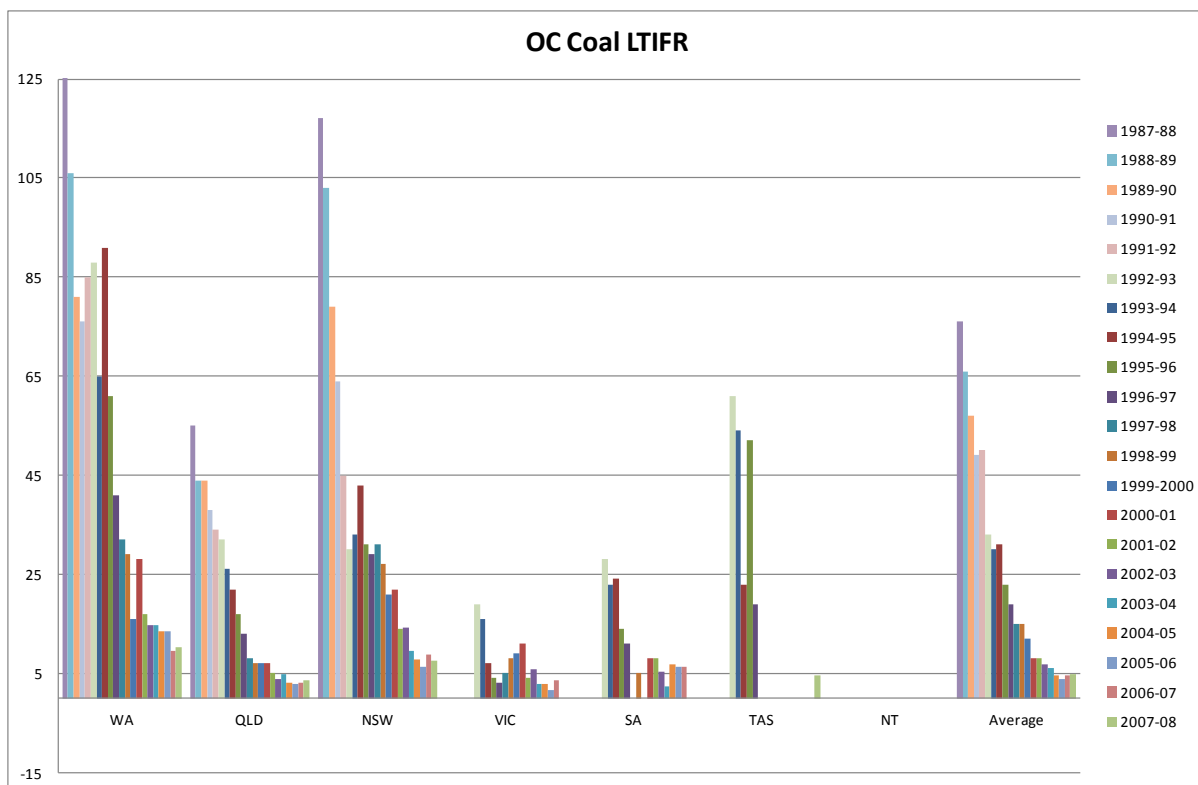


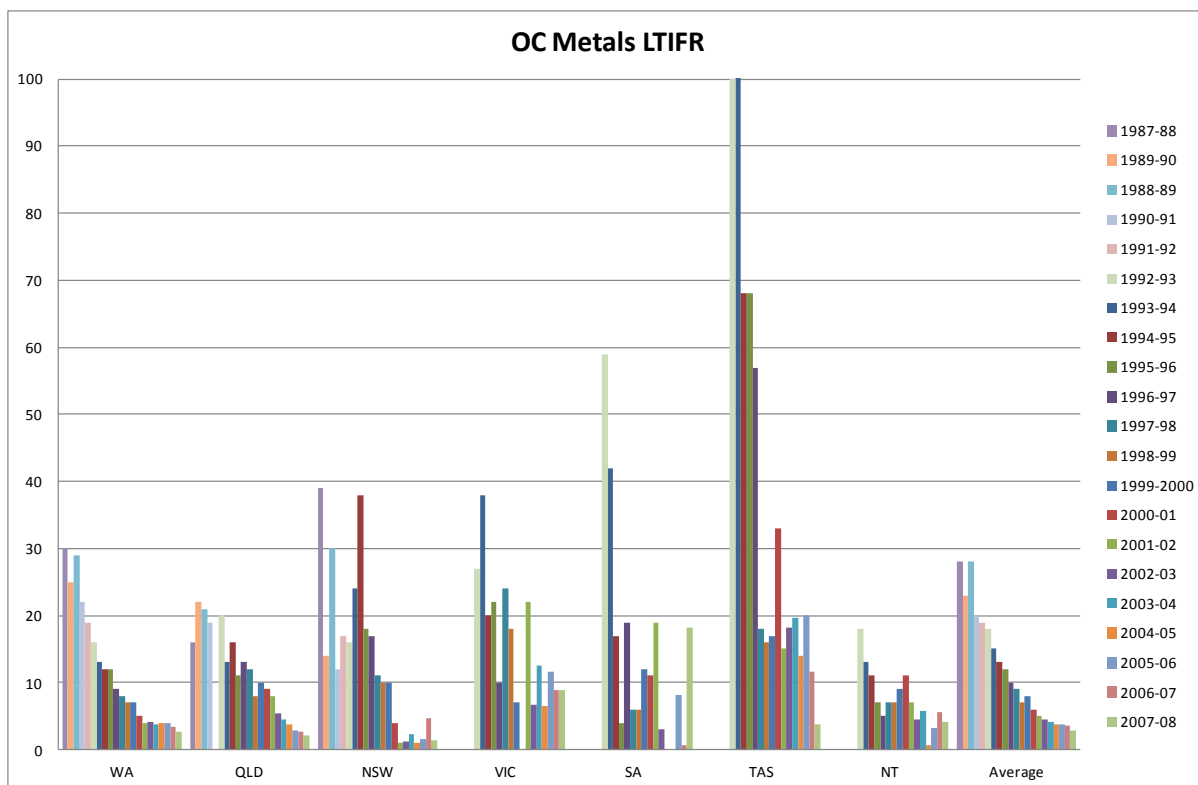
Another issue is the lumping of all major mining states together. The legislative framework in WA is very different to that in NSW and QLD. There is currently no regulatory requirement in WA for health and safety management systems, formal risk management processes or principal/major hazard management plans.

A more appropriate analysis would have been to use the lost time injury data reported to the MCA by each state regulator. These data include all LTI that occur on mine sites.

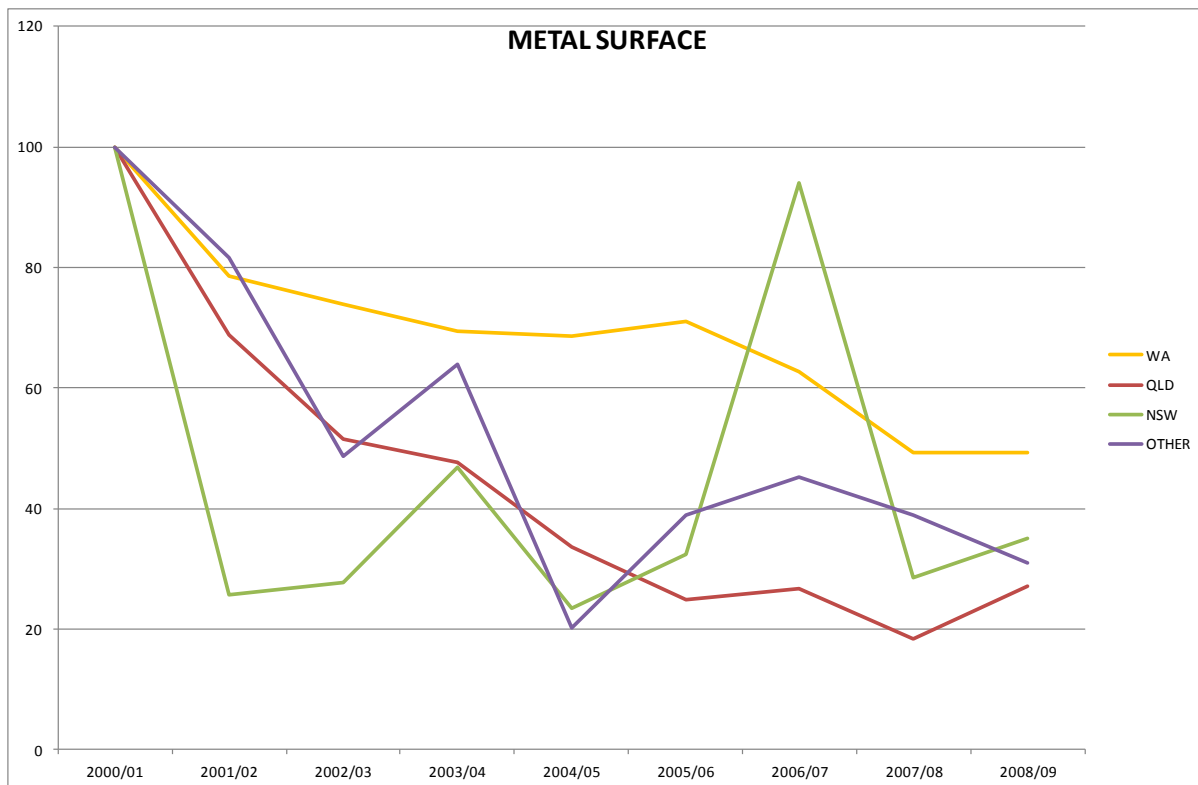
The graphs below compare the LTIFR for each state where a comparison between the “mining” states and the others can be made. UG coal is not included as this only occurs in QLD and NSW except for one small mine in TAS and thus is not a statistically valid comparison.

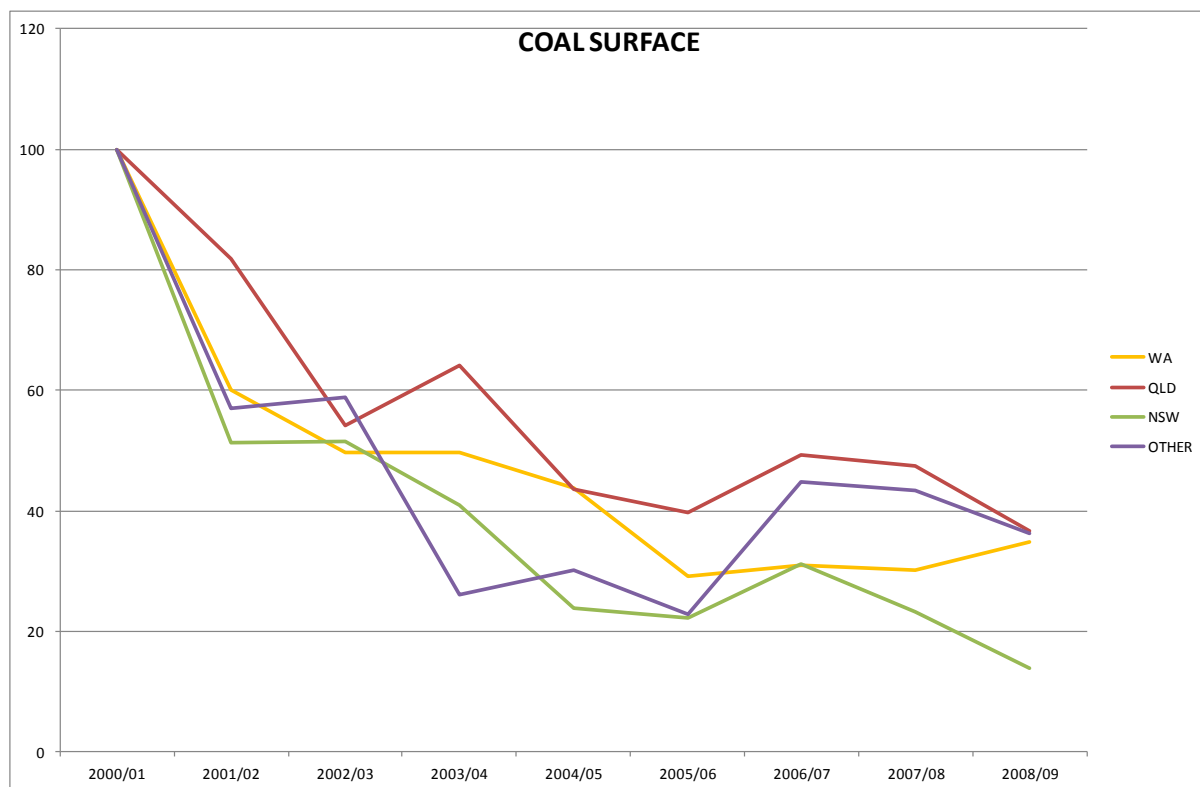
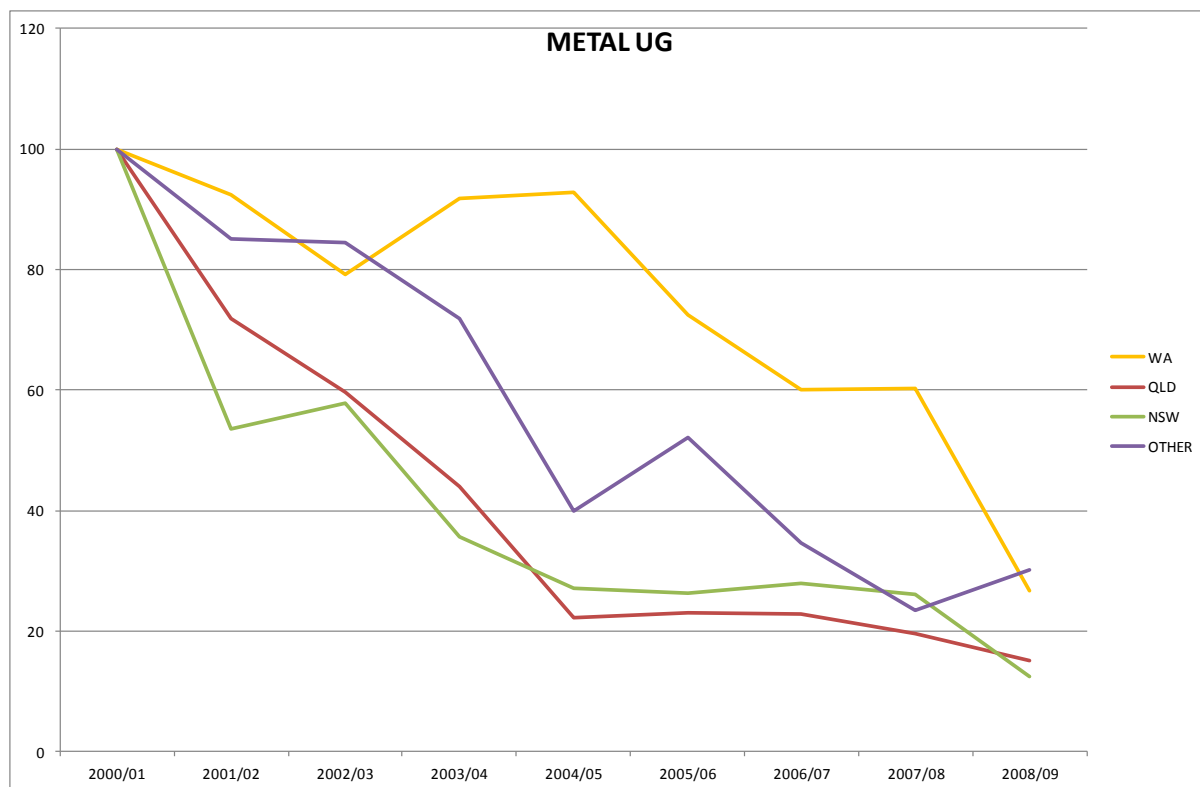
⁷⁸ Note, data are available prior to 1996-97, but not on a compatible basis with data used herein.





Putting the data in the form used in the Deloitte report, except each major mining state is kept separate and the other states are combined within sectors for the period 2000-2001 – 2007-08 results in the following graphs.





These graphs do not indicate any great difference between the core and non-core states in terms of OHS improvement since 2000-01. In general Queensland and NSW have performed better than the core states and WA has performed not as well as the core states. This analysis overlooks a number of factors:

- There were a number of major disasters in the 1990's – Moura No. 2 in 1994 (11 fatalities), Gretley in 1996 (four fatalities), Bronzewing in 2000 (three fatalities) and North Parkes in 1999 (four fatalities). Each of these incidents had a sobering effect on OHS in mining and caused companies to re-examine the way they managed safety. For example in Queensland in 1996 the chief inspector of coal mines introduced safety management systems, principal hazard management plans and risk management under the older act and regulations.
- Most major mining companies operate mine sites in a number of states of Australia and across jurisdictions. Their internal systems, whilst complying with the relevant jurisdiction, operate across all sites and their OHS standards, policies and procedures apply across all sites, independent of the jurisdiction.
- There were approximately 140000 workers in the Australian Mining Industry 2008-09 (MCA Annual Health and Safety Report 2008-09). The table below outlines the distribution of these workers (% of total in that sector) across Australia.

SECTOR	WA	QLD	NSW	CORE
Metalliferous Surface	76.0	10.2	2.9	11.0
Metalliferous Underground	32.4	20.6	17.7	29.3
Metalliferous Total	65.1	12.8	6.6	15.5
Total Coal Surface	2.5	59.8	32.6	3.8
Coal Underground	0.0	34.9	64.7	0.5
Coal Total	1.8	52.7	41.8	2.8
Mining Total	42.5	27.0	19.1	11.3

- These data indicate the limitations and dangers of trying to apply this type of statistical analysis without adjusting for sector and recognising that the major mining states will influence the manner in which OHS is managed beyond their boundaries.
- In 2008-09 the LTI per 1000 workers for each sector was:

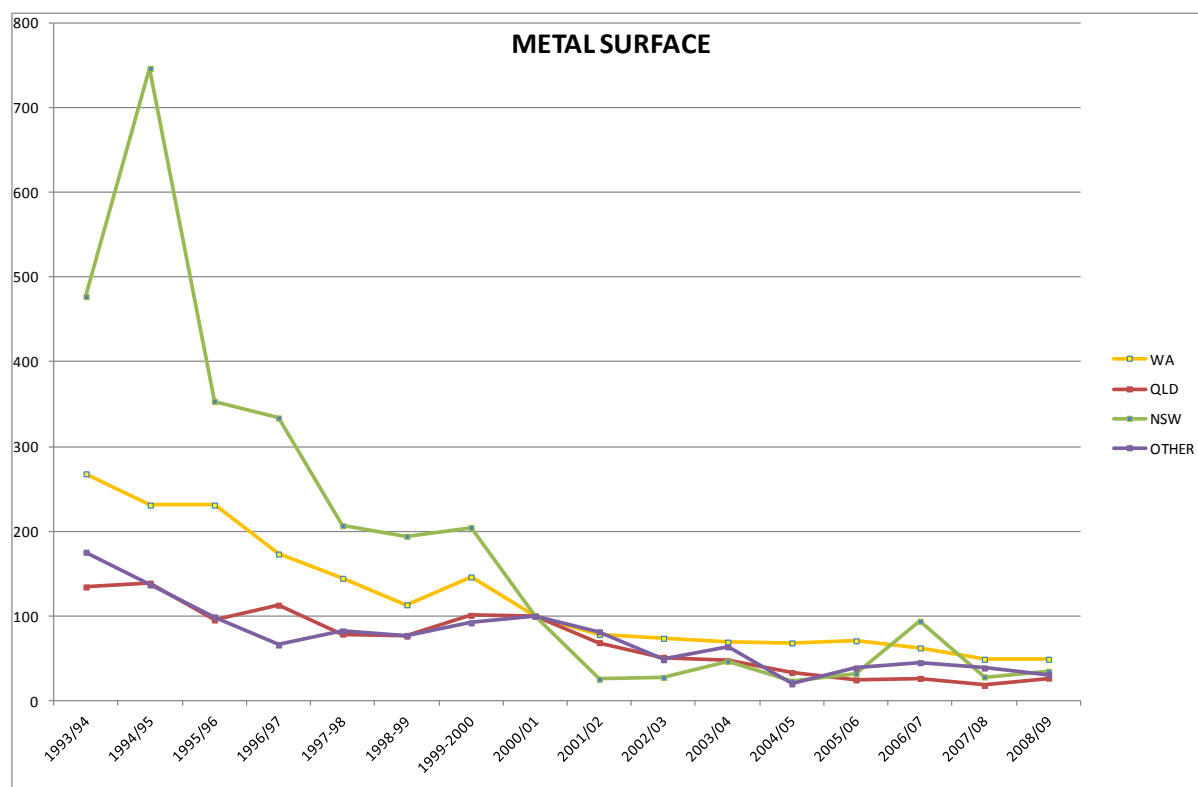
	WA	QLD	NSW	CORE
Metal oc	5.50	7.63	3.56	8.01
Metal ug	4.65	5.59	6.76	8.31
Coal oc	17.49	5.75	13.42	6.59

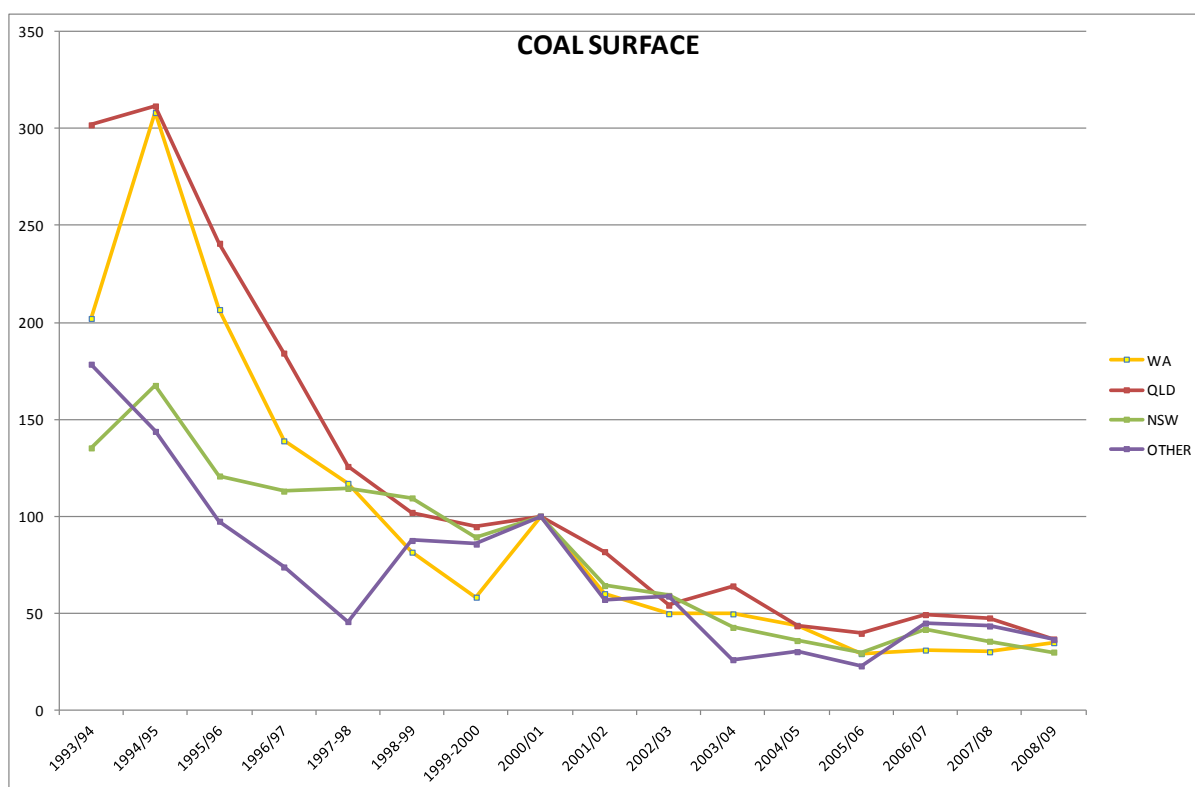
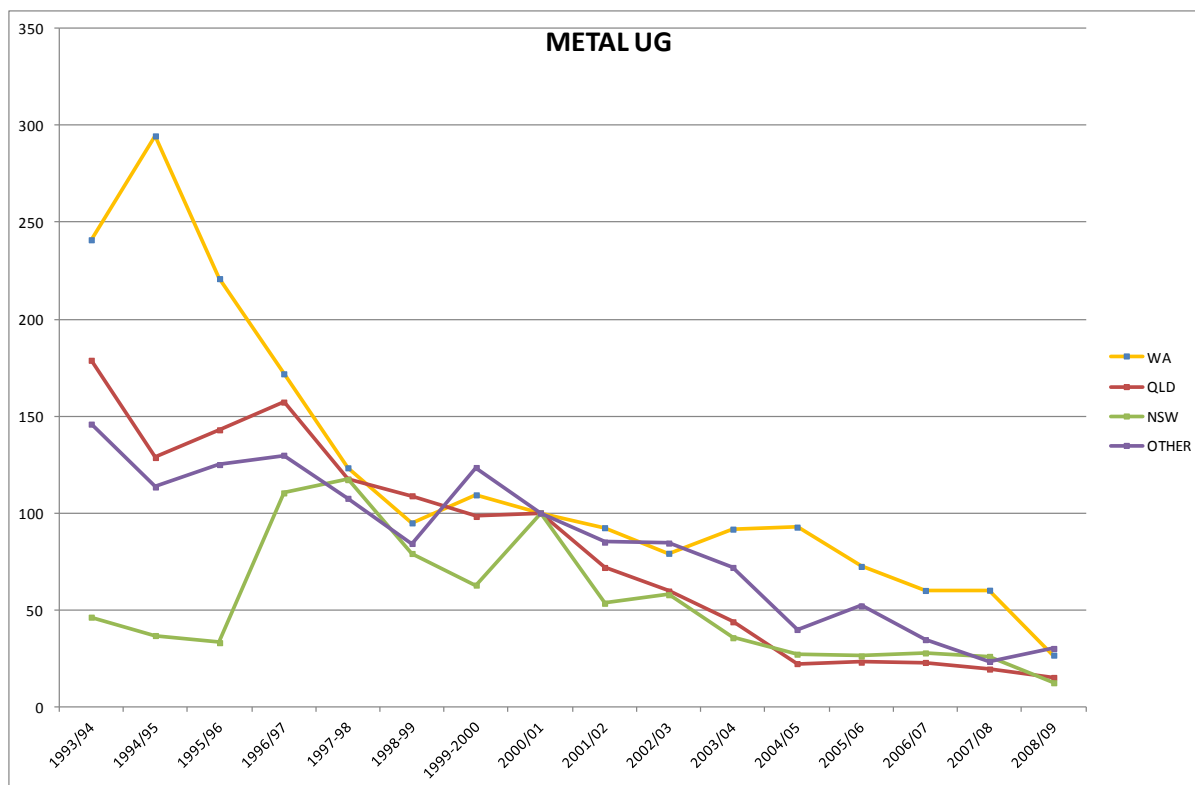
It is important to note that the data for WA relate to one open cut mine and the core relates to the principally to the bucket wheel dredge brown coal open cut mining of Victoria and in both cases relates to a relatively small number of workers (2.5 % and 3.8 % of workers in that sector respectively)

- The mining OHS legislation situation is quite complex with NSW combining general OHS legislation and mining specific. QLD and WA have exclusive mining OHS legislation. WA legislation has been in place since 1995 (act 1994, regulations 1995), QLD introduced its acts in 1999 and regulations in 2001. NSW legislation is spread over 2000 to 2007: *Occupational Health and Safety Act 2000, Coal Mine Health and Safety Act 2000, Mine Health and Safety Act 2004, Coal Mining Safety and Health Regulation 2006, Mine Health and Safety Regulation 2007 and the Occupational Health and Safety Regulation 2001. It is thus very difficult to assess the impact of the differing styles of legislation.*

Extrapolation of the graphs to the early 1990's.

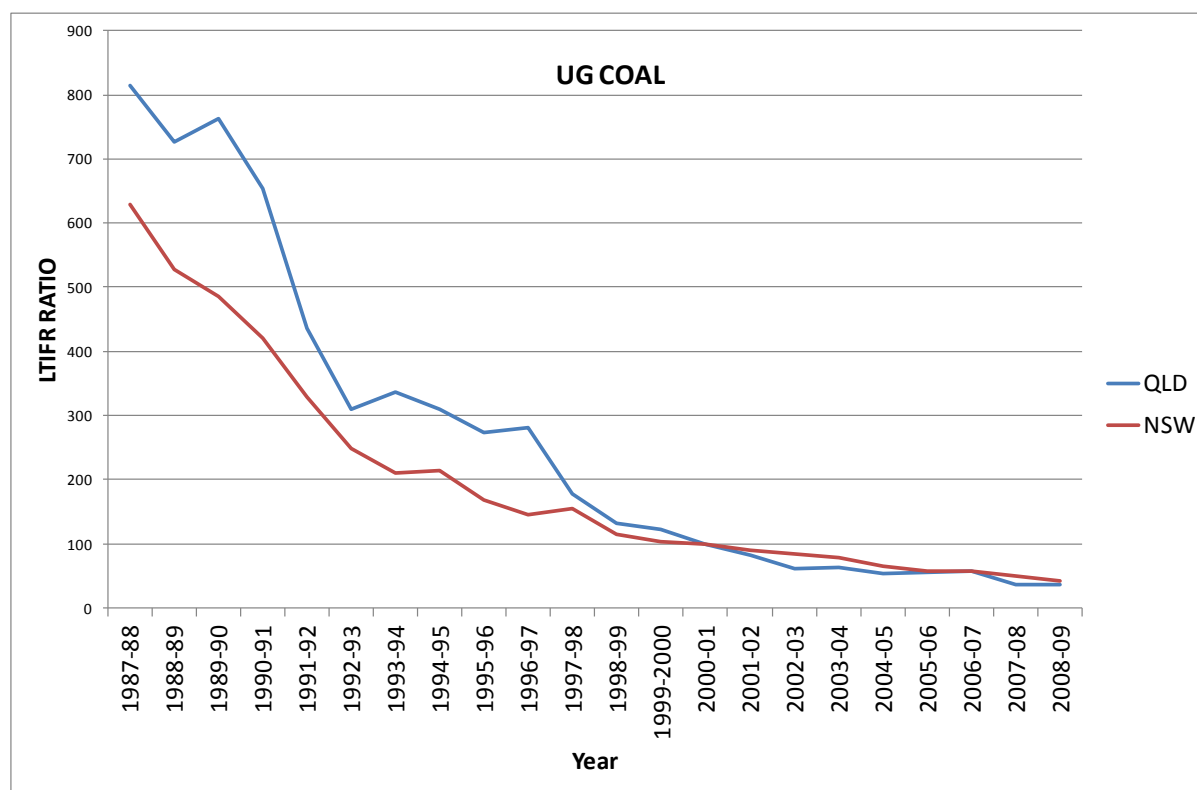
The graphs below extrapolate the data above back into the 1990's. There are issues with data quality and it is recognised that the early metalliferous data for NSW overestimate the employee numbers and underestimate the number of LTI. This is because at this time Australian Bureau of Statistics data was used for employee numbers as opposed to the State Government Mines Department collecting employee numbers directly. The data for 1993/94, 1994/95 and 1995/96 for NSW should thus be treated with scepticism. For consistency the data from the year 2000/01 is set to 100 and the other data are scaled to this value.





Data for coal mining goes back to the mid 1980's. For comparison to the above data the graph below outlines the progress made in the LTIFR for underground coal where there are no core states involved. Again 2000-01 has been used as the reference year (value =100) and all other years have been scaled to this. The improvement over the twenty year period

is dramatic with a reduction in LTIFR in QLD to 1/20th what it was in 1987-88 in 2008-09 and for NSW it is 1/15th. There were major improvements in the late 1980's and in 1996-97. These coincide with implementation of recommendations from wardens' inquiries into the 1986 Moura No. 4 and 1994 Moura No. 2 mine disasters. The major change in QLD post Moura No.2 was the introduction of safety management systems and principal hazard management plans. Currently the LTIFR for underground coal in QLD is approximately half that for NSW.



CFMEU SUBMISSION

ON

THE CONSULTATION REGULATION IMPACT STATEMENT FOR MODEL WORK HEALTH AND SAFETY REGULATIONS AND CODES OF PRACTICE FOR MINES

Introduction

The Consultation Regulation Impact Statement (RIS) **should** provide a credible preliminary analysis of the likely impacts of the *Model Work Health and Safety Regulations for Mines* (the Model Mine Safety Regulations), and the accompanying draft mining Codes of Practice (COPs); as a platform for additional comment by key stakeholders.

It does not.

Instead, the RIS is riddled with inaccuracies, and flaws in reasoning, which serve to confuse, rather than encourage, a soundly based discussion of the consequences of the introduction and implementation of the Model Mine Safety Regulations.

This CFMEU submission highlights, section by section, those areas where, quite simply, the RIS is wrong. The aim in doing so is to ensure that the next stage Decision RIS provides policy makers with a reliable basis on which to take decisions that will affect the safety of mineworkers.

In addition, the submission provides CFMEU responses to consultation questions posed in the RIS. Our detailed views on these questions have already been provided in the CFMEU submissions on the Model Mine Safety Regulations, and the COPs. This submission should be read in conjunction with those documents.

Page (ii) - Policy Development Process

The CFMEU's clear understanding is that the 'non-core' Drafting Instructions have not yet been finalised. Accordingly, a final version cannot have been presented to, or endorsed by, the ad-hoc MCMPR subcommittee.

The existing wording in the RIS needs to be corrected.

Pages (ii) & (iii) - Preliminary Analysis of Potential Impacts

The preliminary analysis of potential impacts is fundamentally flawed. While we elaborate on this in our comments on the relevant sections in the body of the RIS, in summary:

- In many instances, the existing jurisdictional provisions appear to have been misunderstood by the authors of the RIS. As a consequence, the extent to which

particular jurisdictions will need to change their existing regulations to reflect the Model Mine Safety Regulations is inaccurately described. As an example, using the classification system outlined on page 24 of the RIS, most of the level 1 changes listed for Queensland in Table (i) should actually be replaced with dashes to indicate that 'currently compliant duty holders would need to make either no or minimal change to their current work health and safety practices and procedures to comply with the new requirements'.

- As well, the 'analysis' of costs and benefits is unsoundly based. The inaccurate categorisation of the existing legislative regimes in various states; the inappropriate use of Workers' Compensation data; the failure to take account of the safety impacts of non-legislative change (for example the introduction of Principal Hazard Management Plans in Queensland); and the lack of 'like for like' comparisons; all combine to produce a fundamentally inaccurate conclusion about the relative safety performance of 'core' and 'non core jurisdictions'.
- The RIS authors also appear too ready to turn assertions – for example that variations in mine safety regulations in different jurisdictions 'shift an employer's work health and safety focus from improving safety in the workplace to dealing with paper work'⁷⁹ – into 'factual' conclusions about cost reductions.

The plethora of factual inaccuracies may have been identified earlier if key government, union, and industry stakeholders in the 'non-core' jurisdictions had actually been consulted in the preparation of the RIS. As Appendix E makes clear, and contrary to page (iii) of the RIS, these key stakeholders did not provide input into the RIS development process.

Section 2.3/Page 6 – Policy Development Process

As previously stated, the CFMEU's clear understanding is that the 'non-core' Drafting Instructions have not yet been finalised. Accordingly, a final version cannot have been presented to, or endorsed by, the ad-hoc MCMR subcommittee.

The existing wording in the RIS needs to be corrected.

Section 3.1/Page 7 – Overview of Current Mining Work Health and Safety Arrangements

It is worth noting that the lessons learnt from coal industry disasters such as the one that occurred at Moura No2 underground mine on 7 August 1994; have also led to changes being made to metalliferous legislation⁸⁰. That is, there has been a willingness to apply better practice to sectors that have not actually directly experienced the disasters.

Section 3.1/Page 12

It is not clear why the Queensland regulations are described in a 'shorthand' form; as distinct from the approach taken when describing the contents of regulations in other jurisdictions. Using a common approach would assist reader comparison of the existing provisions in each jurisdiction.

⁷⁹ As per p14 of the Consultation RIS.

⁸⁰ See for instance changes made to emergency response, and escape provisions applying to underground metalliferous mines in Queensland under the *Mining & Quarrying Safety and Health Regulation (Qld)* 2001.

Section 3.2/Page 14 – Regulatory Inconsistencies Under Current Arrangements

The wording of the sub-sections on ‘Multi-state employers and red tape’, and ‘Distractions’, suggests that the RIS authors have adopted as fact assertions that variations in safety regulations are diverting multi-state employers’ attention from safety improvement; to paperwork.

In reality, multi-state mining industry employers will have whole of company safety systems that are applied across state, and even national boundaries. Their primary costs relate to the implementation of those systems.

As well, in the black coal industry, the variations in jurisdictional requirements are actually quite minimal. They certainly do not provide a justification for employers to divert their attention from safety improvement.

It is notable that while perceived costs to employers are discussed in some detail in this section; the inequity in the level of safety protection provided to mine workers in the various jurisdictions is not explored.

Section 4.1/Page 15 – Policy Development Process

As previously stated, the CFMEU’s clear understanding is that the ‘non-core’ Drafting Instructions have not yet been finalised. Accordingly, a final version cannot have been presented to, or endorsed by, the ad-hoc MCMRPR subcommittee.

The existing wording in the RIS needs to be corrected.

Section 4.2/Page 17 – Regulatory Options

The final sentence in this section indicates that an outcome of the ongoing co-existence of ‘core’ and ‘non core’ regulations will be reduced transferability of health and safety processes.

Retention of additional regulations in ‘non-core’ jurisdictions is also very likely to result in greater protection for mineworkers in high hazard environments such as underground coal mines.

The section should either describe all likely outcomes or none.

Section 5.1/Page 24 – Assessment of Expected Impacts

As previously noted, the processes used to assess expected impacts were deficient. Some existing jurisdictional provisions have been misunderstood, or overlooked; and there has been insufficient consultation with key stakeholders in the ‘non-core’ jurisdictions.

As per comments on Table (i), Table 5.2 does not accurately represent the likely impact of the Model Mine Safety Regulations in all jurisdictions.

Section 5.2.1/26 – Definitions

The Consultation RIS indicates that “only NSW specifically identifies tourist mines as a type of mine within their definition”. This is not correct. See, for example, Section 9 (1) (e) of the

Coal Mining Safety and Health Act (Qld) 1999; and Section 9 (1) (e) of the Mining and Quarrying Safety and Health Act (Qld) 1999.

The RIS seeks comment on the kind of exploration activities that should be captured by the regulations; and, in particular, queries the applicability of the Model Mine Safety Regulations to 'low impact exploration.'

The CFMEU supports the definition of 'mining operations' put forward in the Model Mine Safety Regulations and, therefore, the inclusion of "activities carried out for or in connection with...exploring for minerals by mechanical means that disturb the ground."⁸¹ It is worth noting that the reference to 'low impact' relates to impact on the surrounding environment; not to the potential for harm to workers engaged in exploration activities.

Section 5.3/Page 28 – Managing Risks

The Consultation RIS argues that there is expected to be no impact from the introduction of 'general risk management principles' in Regulations 9.2.1 - 9.2.4.

It should be noted that in our submission on the Model Mine Safety Regulations, the CFMEU has sought several changes to Regulations 9.2.2 and 9.2.3, to better reflect both the *National Mine Safety Framework Core Drafting Instructions* (the Core Drafting Instructions); and sound risk management practices. In brief, the Regulations need to be amended to:

- provide that the mine operator must assess risks to health and safety by means of a systematic, comprehensive, risk assessment methodology; and
- make clear that, having assessed risks, the mine operator's first duty should be to eliminate risk so far as is reasonably practicable.

Even with those amendments the Model Mine Safety Regulations, taken in isolation and without considering the impact of yet to be completed Non-Core Regulations, would actually represent a diminution in the risk management requirements placed on mine operators in Queensland. Coal mine operators, for example, are presently required to develop standard operating procedures for managing and controlling hazards at the mine⁸².

Section 5.3/Page 30 – Work Health and Safety Management System

The Consultation RIS seeks comment on the adequacy of Regulation 9.2.6, and the draft *Code of Practice on Work Health and Safety Management Systems in Mining*.

The CFMEU has already provided detailed comments on both the Regulation and the Code. In short, we are strongly of the view that numerous key requirements are missing from Regulation 9.2.6, (and correspondingly from the Code).

The Regulation needs to be brought into line with the Core Drafting Instructions, and existing good practice, to require that a WH&S Management System must:

⁸¹ As per Regulation 9.1.2 (b) of the *Draft Model Work Health and Safety (Mines) Regulations* (the Model Mine Safety Regulations), Safe Work Australia, July 2011.

⁸² See Section 10 *Coal Mine Safety and Health Regulation* (Qld) 2001.

- “form part of, and be integrated with, the mine’s overall management systems”⁸³
- include arrangements for managing the risks “arising from the use of contractors”⁸⁴
- provide for “a management structure of competent persons” and “timely filling of vacant positions in the management structure”⁸⁵
- incorporate a description of the hazard identification methodology that will be applied at the minesite
- contain a description of the resources that will be applied to ensure that the System can be effectively implemented
- include the Emergency Response Plan
- incorporate induction, training, and competency requirements
- describe processes for incident response and investigation
- contain procedures for records management.

The CFMEU also opposes the proposal that exemptions be provided from the WHS Management System requirements set out in Regulations 9.2.5 to 9.2.8. Exemptions from these Regulations are both unnecessary (given that WHS Systems will, by their very nature, already be tailored to the circumstances of the mine site); and inappropriate (there is no sound reason as to why, for example, a worker at a very small mine site should be afforded less protection from serious injury or death than a worker at a larger operation).

We have also sought amendment to Regulation 9.2.7 to ensure that, again as per the Core Drafting Instructions and existing good practice, WH&S Management System review requirements specifically include “regular inspection of the working environment of the mine.”⁸⁶

The *Code of Practice on Work Health and Safety Management Systems in Mining* will obviously need to be amended to reflect changes made to the Model Mine Safety Regulations.

Table 5.3/Page 31 – Current Jurisdictional Requirements for a Safety Management Plan

This table does not accurately reflect existing jurisdictional requirements. The following list of errors may not be exhaustive:

- health monitoring **is** required to be included in the mine safety management system in Queensland. See Sections 42 & 41 of the *Coal Mine Safety and Health Regulation (Qld)* 2001
- workers’ safety roles in relation to the mine safety management system **are** specified in Section 10, Part 2 *Safety and Health Management System*, of the *Coal Mine Safety Regulation (Qld)* 2001

⁸³ As per Core Drafting Instructions, p14 and Section 62 (2) of the *Coal Mining Safety and Health Act (Qld)* 1999.

⁸⁴ As per Core Drafting Instructions, p15, and, for example, Section 39 of the *Coal Mine Safety and Health Act (NSW)*, 2002.

⁸⁵ See Core Drafting Instructions, p15.

⁸⁶ As per the Core Drafting Instructions, p16 and, for example, Sections 42 (f) (iv) and 62 of the *Coal Mining Safety and Health Act (Qld)* 1999.

- Major Hazard Management Plans **are** required as part of health and safety management systems under Section 23 (3) (b) of the *Coal Mine Health & Safety Act (NSW) 2002* and the *Coal Mine Health and Safety Regulation (NSW) 2006*.
- monitoring and assessment arrangements **are** incorporated into health and safety management system requirements in NSW as specified in sections 13 and 18 of the *Coal Mine Health and Safety Regulation 2006*.
- Health and Safety Management System review requirements **are** specified in Section 28 of the *Coal Mine Health and Safety Act (NSW) 2002*.
- ventilation control arrangements **are** a required component of health and safety management systems as per Section 21 of the *Coal Mine Health and Safety Regulation (NSW) 2006*.

Section 5.3/Page 32 – Request for Comment

The discussion of the impacts of introducing requirements for Work Health and Safety Management Systems is currently largely focussed on the upfront costs to employers. The benefits in terms of costs avoided (as a result of accident prevention) also need to be explored.

Section 5.4/Page 33 – Principal Hazard Management Plans

The Consultation RIS seeks comment on the adequacy and appropriateness of the treatment of principal mining hazards, and requirements for Principal Mining Hazard Management Plans (PMHMPs), in the Model Mine Safety Regulations.

Once again, the CFMEU has commented extensively on these matters in our submissions on the Regulations.

At present requirements for principal mining hazard management in the Model Mine Safety Regulations are fragmented⁸⁷, are not consistent with the provisions of the Core Drafting Instructions, and are insufficiently detailed.

This is a fundamental flaw in the Regulations (and the accompanying COPs).

In brief, the Regulations need to be amended to:

- comprehensively set out the specific requirements for each statutorily prescribed PMHMP in a single location to avoid confusion, and ensure that mine operations and others can readily identify and understand the full range of their obligations
- provide for tighter controls over inundation and inrush in accordance with Section 33 of the *Coal Mine Health and Safety Regulation (NSW) 2006* and the Core Drafting Instructions⁸⁸
- incorporate controls over the design, construction, installation and maintenance of mine shafts and winding systems; and make numerous amendments to the existing provisions relating to mine shafts and winding in Regulation 9.2.15 and Schedule 9.2
- place an explicit duty on mine operators to eliminate the risks associated with mobile plant, so far as is reasonably practicable; and incorporate additional contents for the

⁸⁷ With some aspects in the body of the Regulations and others in Schedule 9.2 Principal Mining Hazard Management Plans – Additional Matters to be Considered.

⁸⁸ See Section 12

Roads, Other Vehicle Operating Areas and Traffic Management PMHMP. These requirements should be taken from Codes of Practice and current state legislation⁸⁹.

- place an explicit duty on mine operators to eliminate the risk of dust explosion so far as is reasonably practicable; specify additional dust control measures; and require that PMHPs applying to coal mines must include standard operating procedures for dust inspection, analysis, control, and suppression
- incorporate more specific requirements for *Fire and Explosion* PMHMPs in accordance with the Core Drafting Instructions and existing state regulations⁹⁰.
- include additional specific matters which must be considered when developing *Ground/Strata Instability* PMHMPs in accordance with the Core Drafting Instructions⁹¹.

The Consultation RIS also seeks comment on the draft COPs for the control and management of principal mining hazards.

CFMEU views on these COPs are set out in full in our submission on the Codes.

All Codes will need to be amended to reflect changes to the regulations regarding principal mining hazard management.

The *Inundation and Inrush Hazard Management* COP; the *Ground Control in Open Pit Mines* COP; the *Strata Control in Underground Coal Mines* COP; the *Ventilation* COP; and the *Roads and Other Vehicle Operating Areas* COP also require additional amendments to bring them into line with current good practice.

The *Underground Winding Systems* COP is fundamentally inadequate for the mining industry. The New South Wales Government's revised Mining Design Guideline 33 would form a far more comprehensive, and useful, basis for a revised Winding COP.

Section 5.4/Page 37 – Overview of Impacts from the Proposed Regulations

Once again, the Consultation RIS considers impact almost exclusively in terms of the upfront cost to mine operators. The RIS expresses particular concern about the perceived cost impact on small mines. As experience in Queensland has demonstrated⁹², small mines can have a 'disproportionate' rate of fatalities and serious injuries. Bringing a rigorous, focussed approach to the management of principal mining hazards in small mines is very likely to result in improved safety performance at those operations. This needs to be considered in the RIS.

Section 5.5/Pages 37-40 – Specific Risk Control Measures

See previous comments on management of principal hazards.

⁸⁹ See for example, Section 128, of the *Coal Mine Safety and Health Regulation (Qld)*, 2001.

⁹⁰ See Core Drafting Instructions, p40 with regard to systems for the early detection and suppression of fire, and fire fighting equipment; and state regulatory requirements regarding explosion barriers.

⁹¹ Core Drafting Instructions, p30.

⁹² A 'disproportionate' number of small mine fatalities led the Queensland Government to introduce safety and health management system requirements for mines with fewer than 10 workers, as described in the *Queensland Mines and Quarries, Safety Performance and Health Report* 2009-10.

The Consultation RIS states that “currently only Victoria and NSW have specific regulations related to ensuring safety information is conveyed between shifts”. This is not correct.

Failure to adequately convey safety related information between shifts; and failure to inform the incoming workforce of problems experienced on previous shifts; were significant factors contributing to the disaster at the Moura No.2 Underground Mine on 7 August 1994. The existing Queensland legislation and regulations reflect the need to ensure that workers are, never again, expected to find out critical information about the safety of their workplace “on the grapevine.”⁹³ Regulations 107 (5); 308 (3); and 106 (3) of the *Coal Mining Safety and Health Regulation (Qld)* 2001 all explicitly require the transfer of safety related information between shifts.

The Consultation RIS seeks comment on whether any further specific controls around air quality and air safety are required. In our submission on the Model Mine Safety Regulations the CFMEU have sought to bring the Regulations into line with the Core Drafting Instructions; and to ensure that the Regulations reflect existing good practice. In brief the Regulations need to be amended to:

- set out the process to be followed in the event that an analysis reveals a concentration of airborne dust in excess of the prescribed limit⁹⁴
- redraft Regulation 9.2.22 to take account of the reality that underground coal mines cannot meet the standards outlined in the General Regulations, and to, instead, reflect the *Coal Mine Safety and Health Regulation (Qld)* 2002 Sections 343, 359, 361 and Schedule 6
- clarify that the provision of personal protective equipment does not allow mineworkers to be exposed levels of dust which exceed levels prescribed in Regulation 9.2.21 (b).

The Consultation RIS also seeks comment on “the kinds of things and substances that should be prohibited underground.” The CFMEU view is that there need to be schedules which cover prohibited items, prohibited uses, and controlled uses. Appropriately, these schedules will vary dependent on the type of mine and the nature of the hazards potentially found at the mine.

Section 5.6/Pages 40 – 42 – Emergency Planning

In our submission on the Model Mine Safety Regulations, the CFMEU has sought critical amendments to the Regulations covering emergency planning. These amendments will necessitate accompanying changes to the relevant Codes of Practice.

At present, the Regulations are silent on precautionary withdrawal of personnel from a mine. In 1994, 11 Queensland mineworkers died because of a mine operator’s ultimate failure to withdraw personnel from the Moura No.2 mine whilst there was a potential for an explosion. It is the CFMEU’s very strong belief that all mineworkers, regardless of the type of mine they work in, or their location, should be protected by inclusion of an obligation on mine operators to put in place a plan for precautionary withdrawal of mineworkers.

⁹³ *Report on an Accident at Moura No.2 Underground Mine on Sunday 7 August 1994*, Warden’s Inquiry Report, p44.

⁹⁴ As per the Core Drafting Instructions, p39.

We have also recommended a number of other changes to the emergency planning provisions. In brief, the Regulations need to be amended to provide that:

- mine operators be required to include a plan for precautionary withdrawal of mineworkers within their Emergency Response Plan
- withdrawal plans must incorporate documented Trigger Action Response Plans for both withdrawal and re-entry
- withdrawal from the mine be mandated in certain circumstances – these should reflect the provisions in the *Queensland Coal Mining Health and Safety Act 1999* and the findings of the Moura No.2 Warden’s Court Inquiry.
- a mineworker has an explicit right to withdraw to a place of safety if the mineworker reasonably believes his or her health or safety is seriously endangered
- Emergency Response Plans must provide for resources that allow continuous rescue operations to take place at the mine
- Emergency Response Plans be reviewed annually
- an Emergency Response Plan must incorporate documented triggers for the activation of the Plan
- Emergency Response Plans must be “commensurate with the nature, size, complexity and risks associated with the mine”⁹⁵
- underground mines be required to have caches of self rescuers; resuscitation equipment; and alarm systems.

In our submission on the Model Mine Safety Regulations, the CFMEU has also highlighted the impracticality of the present Regulation 9.2.37 regarding emergency exits. As it stands this Regulation would appear to require mine operators to provide 3 or 4 means of egress from an underground mine. Under this provision, many existing mines would be inoperable. The CFMEU would support revision of Regulation 9.2.37 (3) to reflect Regulation 296 (1) of the *Coal Mining Safety and Health Regulation (Qld) 2001* which provides that a mine operator must “ensure the mine has at least 2 trafficable entrances (escapeways) from the surface that are separated in a way that prevents any reasonably foreseeable event happening in 1 of the escapeways affecting the ability of persons to escape through the other escapeway.” There is also a need to ensure escape from the working faces of the mine. Again, the CFMEU would support inclusion of the relevant wording from the *Coal Mining Safety and Health Regulation (Qld) 2001*.

The Consultation RIS poses the question as to whether mines “in the initial stages of development” should face different requirements. It is the CFMEU’s view that, again in accordance with existing good practice, once a mine has its initial driveages from the surface it must have them connected prior to ongoing mine development.

We are also asked to comment on whether self-contained self rescuers (SCSRs) need to be provided at all underground mines, (other than ‘tourist mines’) – with the inference being that small mines may not need SCSRs. Given that all mines, small or large, can experience circumstances where the atmosphere is irrespirable; the universal application of the proposed Regulation must be a minimum requirement.

Section 5.6/Pages 42 – 47 – Overview of the Impact of Emergency Planning Provisions

⁹⁵ Core Drafting Instructions, p22.

Once again, the Consultation RIS focuses almost exclusively on the short term cost impacts of the proposed Regulations, with scant consideration of the likely safety benefits.

With regard to emergency exits, the RIS correctly states that Regulation 9.2.37 is likely to have a substantial impact on Queensland, WA, SA, Tasmanian and NT mines (notably in an adjacent sentence the RIS also states there should be little impact in WA...).

In reality, the Regulation as drafted is likely to have the effect of shutting down mines in multiple jurisdictions. This is because, as previously stated, the Regulation is currently impracticable.

With regard to self escape from underground mines, there is no discussion of the existing extensive provisions already applying in Queensland. Regulations 168 and 169 of the *Coal Mining Safety and Health Regulation (Qld)* 2001 stipulate that an underground mine's safety and health management system must provide for the self escape of persons; the system must be developed via a risk assessment that considers matters specified in Regulation 168; there must be a standard self escape operating procedure for familiarising mine workers with the mine's escapeways; and the procedure must include the use of exercises under simulated conditions. These provisions are far more comprehensive than those proposed in the Model Mine Safety Regulations.

The Consultation RIS argues that NSW and Queensland will be impacted by Regulation 9.2.39 regarding provision of emergency signage. In reality, the Regulation is unlikely to place any additional burden on coal mine operators in either state. In Queensland, for example, mine operators are already required to develop a system for self escape that incorporates marked escape routes, and signposting of the location of resources for self escape (for example self rescuer caches)⁹⁶. In NSW these matters are covered in Mine Design Guideline 1020 *Guidelines for Underground Emergency Escape*. (Whilst it is recognised that this latter document is a Guideline – rather than a Regulation – it does set out a generally accepted standard industry approach).

The RIS states that “there will be some impact in NSW in relation to the requirement to provide training in the use of self rescuers...” Again, there is unlikely to be any impact as a result of this requirement. NSW mine operators have general obligations in relation to training as per Regulation 13 of the *Occupational Health and Safety Regulation (NSW)* 2001. These obligations are fleshed out in further detail in Mine Design Guideline 1020 which specifically details self rescuer training requirements.

The RIS also asserts that there will be an impact in both NSW and Queensland arising from Regulation 9.2.41 regarding personal protective equipment in emergencies. It is difficult to foresee any such impact given the existing regulatory requirements regarding rescue and escape in both jurisdictions.

Section 5.7/Page 51 – Impact of Proposed Regulations on Information Training and Instruction

The RIS states that there will be some impact on NSW mine operators as a result of the proposed Regulation 9.2.46 requirement that they keep a record of training provided to

⁹⁶ As per Regulation 168.

mineworkers. Any such impact is likely to be minimal given the existing requirements in the *Occupational Health and Safety Regulation (NSW) 2001*⁹⁷, and, for coal mine operators, given the provisions of Guideline Order 34⁹⁸.

The RIS also indicates that there will be some impact in Queensland as a result of the Regulation 9.2.44 requirement to provide information on risks to visitors. In reality, Queensland mine operators are already required to provide information and notifications in relation to hazards and risks to all those present at a mine, including visitors⁹⁹.

Section 5.8/Pages 52-55– Fitness for Work and Health Monitoring

In our submission on the Model Mine Safety Regulations, the CFMEU has recommended a restructure of Part 9.3 of the Regulations to explicitly provide for health surveillance as well as health monitoring; and to significantly amend fitness for work provisions.

We have recommended that:

- there be (a) “periodic monitoring of the level of risk likely to adversely affect a person’s health arising from hazards at the mine” as well as (b) “medical examination of workers”
- the extent of medical examination/tests be determined by the regulator and prescribed in regulation
- Regulation 9.3.4 (3) (a) be amended to provide that medical examinations must be carried out by a registered medical practitioner
- the scope and methodology of health monitoring must conform to an approved Schedule under the Regulations
- health monitoring be explicitly restricted to work related hazards
- the Fitness for Work provisions be expanded to set out, in more detail, the scope of the FFW component of the mine’s WHS Management System. Following the approach taken in the *Coal Mining Safety and Health Regulation (Qld) 2001*¹⁰⁰ mine operators should be required to incorporate fatigue related education; employee assistance; maximum shift lengths, number and length of rest breaks in a shift; and the maximum number of hours to be worked in a week or roster cycle; into their WHS Management System
- Regulation 9.3.2 (2) be deleted and replaced with provisions relating to alcohol and drug testing in accordance with the Core Drafting Instructions
- Regulation 9.3.3 be replaced with wording consistent with sections 39 and 40 of the *Coal Mine Safety and Health Regulation (Qld) 2001*.

The Consultation RIS seeks comment on the adequacy of the accompanying *Code of Practice for Health Monitoring in Mining*. The COP clearly needs to be rewritten in accordance with proposed amendments to the Model Mine Safety Regulations. In addition, as outlined in our submission on the COP, there are numerous deficiencies in the current wording of this Code which make it difficult to follow; and Appendix E to the Code (which

⁹⁷ See Regulations 78, 174ZV, 175ZC, 175ZD, and 223.

⁹⁸ See Section 7.2.

⁹⁹ See for example, Section 8 of the *Coal Mine Safety and Health Regulation (Qld) 2001*.

¹⁰⁰ See Section 42 (2).

discusses heat stress) does not constitute adequate guidance for mine operators and mine workers.

The RIS also queries whether there should be further provisions to allow sharing of costs related to health monitoring. The CFMEU would oppose any such provisions on the basis that given that work related hazards are under the control of the mine operator; it is entirely reasonable and appropriate to expect that the mine operator should have the sole obligation for meeting the costs associated with monitoring for the impacts of those hazards.

In addition, the Consultation RIS seeks comment as to whether there should be a worker to duty to, for example, 'advise their PCBU of certain circumstances relevant to their ability to carry out work safely', such as fatigue.

As previously stated, in our submission on the Model Mine Safety Regulations the CFMEU has already supported inclusion of worker duties relating to consumption of alcohol, and carrying out activities under the influence of alcohol¹⁰¹.

The CFMEU would also support inclusion of the worker duties already outlined in the *Queensland Coal Mining Safety and Health Act (Qld)* 1999 at sections 31 (the duty to take action where there is an unacceptable level of risk); and 39 (general duties including an obligation to work at a mine only if the worker is in a fit condition to carry out the work without affecting the safety and health of others); and in the *Coal Mining Safety and Health Regulation (Qld)* 2001 at section 42 (an obligation to notify where a person's current use of medication could impair their ability to carry out their duties at the mine)¹⁰².

It must be stressed that, as per the CFMEU submission on the Model Mine Safety Regulations, all mineworker duties need to sit within a comprehensive approach to prevention and control of fatigue, and other fitness for work issues.

Once again, the impacts of proposed regulations on fitness for work, and health monitoring, are described only in terms of upfront costs.

Section 5.9/Pages 56 – 58 – Consultation and Workers' Safety Role

The RIS asserts that the consultation provisions contained within the Model Mine Safety Regulations will place more prescriptive requirements on mine operators in Queensland.

The RIS also asserts that Queensland will be required to introduce a legislated safety role for workers in mines.

These assertions are unsound.

Workers' safety obligations, their roles in risk management, their roles in principal hazard management, and their roles in development of fitness for work strategies are already specified in Queensland legislation and regulations¹⁰³.

Section 5.10/Pages 58-59 – Mine Survey Plans

¹⁰¹ As per Sections 39 & 40 of the *Coal Mining Safety and Health Regulation (Qld)* 2001.

¹⁰² As per Section 42 (4) (d) the Site Senior Executive has an obligation to keep a record of the notification.

¹⁰³ See for example Sections 32 (2) (b); 33; and 64 (2) of the *Coal Mining Health and Safety Act (Qld)* 1999.

In our submission on the Model Mine Safety Regulations the CFMEU have recommended that mine operators be required to obtain all historical survey plans, from all relevant persons, before commencing mining operations.

The *Code of Practice for Survey and Drafting Directions for Mine Surveyors* will need to be amended accordingly.

Section 5.11/Pages 60-61 – Notification of High Potential Incidents

In our submission on the Model Mine Safety Regulations, the CFMEU sought amendment of the Regulations to provide for a specific obligation on mine operators to “collect, maintain and provide to the regulator information in relation to all injuries, diseases and high potential incidents to support the development and maintenance of the National Mine Safety Database as set out in the National Mine Safety Framework Implementation Plan.”¹⁰⁴

We noted that the current Model Mine Safety Regulations do contain, at Schedule 9.1, a listing of information to be included in a mine quarterly report. However, this listing is far less comprehensive than the information that was proposed to be gathered for the National Mine Safety Database.

All stakeholders should be focused on safety improvement. Creation of a National Mine Safety Dataset will allow regulators, the mining industry, mining unions, mineworkers, and the general public to form a more accurate view of areas of good practice, and opportunities for improvement. Over time, it will also foster the development of targeted safety intervention strategies.

The CFMEU notes that the proposed content of the National Mine Safety Dataset has been faithfully outlined in Appendix G of the Consultation RIS.

Experience has shown that without legislative backing, it is extremely unlikely, in fact it is inconceivable, that all stakeholders will voluntarily agree to provide that data to all regulators.

The Model Mine Safety Regulations need to be amended to provide that explicit backing.

Section 5.12/Pages 61 – 62 – Mine Record

In our submission on the Model Mine Safety Regulations, the CFMEU has sought amendment of the Regulations to require that:

- the mine record be easily accessible to workers at the mine; and
- when a new mine operator is appointed, the previous mine operator must provide the mine record of the previous seven years to the new mine operator.

These changes would bring the Regulations into line with the Core Drafting Instructions.¹⁰⁵ The *Code of Practice for the Mine Record* also needs to be amended accordingly. As well, as our submission on the COPs indicates, some additional clarifications to this Code are required.

Section 6/Pages 63-69 – Preliminary Cost Benefit Analysis

¹⁰⁴ As per the Core Drafting Instructions, p28.

¹⁰⁵ Core Drafting Instructions, pp 47 & 48.

As previously indicated, the preliminary cost benefit analysis is fundamentally flawed. It:

- inaccurately categorises the existing legislative regimes in various states
- lumps different legislative regimes together and assesses them as one
- uses workers' compensation statistics to draw an inaccurate comparison between states
- draws conclusions regarding potential benefits that are simply unsustainable.

Section 6.2.1 begins with a quotation from Professor Gunningham's work, *Mine Safety; Law, Regulation, Policy*¹⁰⁶ which appears designed to set the scene for an argument to the effect that existing mining industry specific legislation is outdated and less effective than so-called 'mainstream' safety legislation.

The RIS authors have, however, failed to mention that the quotation refers, as the **very next sentence** in Professor Gunningham's work states, to **past** legislative regimes in Queensland and New South Wales, not those in existence in 2007 when the work was published.

Indeed, in the same book, Professor Gunningham goes on to say:

*"In terms of legislative reform, the mining industry, led by Queensland and followed by New South Wales, has come a long way. From being decades behind mainstream OHS legislation, mining sector legislation has shifted to a point where, in some respects at least, it is substantially ahead. Indeed, the Queensland and New South Wales legislation satisfies a substantial number of the desirable characteristics of an OHS legislative framework set out in the National Mine Safety Framework Implementation Plan."*¹⁰⁷

In Professor Gunningham's view, the key improvements were the shift to generic risk based standards, and performance standards, which occurred first in Queensland as a result of the learnings from the Moura No. 2 Underground Mine disaster.

Selective quoting from Professor Gunningham's work, apparently to support an existing point of view, does no credit to the authors of the Consultation RIS.

The RIS authors' categorisation of the various legislative regimes is also confused. They:

- appear to see Queensland and NSW mine safety legislation as interchangeable with that of Western Australia when even a casual reading would demonstrate that this is not the case
- describe legislation as 'outcomes based' when it is in actuality only less detailed than other legislation (see for example references to the *Northern Territory Mining Management Act 2001* which is described as requiring a 'more systematic approach to managing hazards and risks' when, at least as far as health and safety is concerned, no such systematic approach is actually specified)
- evidently take the astonishingly simplistic view that because legislation contains prescriptive elements it cannot overall be described as outcomes based.

¹⁰⁶ Neil Gunningham, *Mine Safety; Law, Regulation, Policy*, Federation Press, Sydney, 2007.

¹⁰⁷ Gunningham, *Mine Safety, Law Regulation Policy*, p42.

In the context of these mis-descriptions and mis-classifications of jurisdictions existing legislative regimes; the RIS authors then go on to argue that those jurisdictions with allegedly 'outcomes based' legislation (ie the 'core' states), have generally better mine safety performance. They do so based on a comparison of workers' compensation data from 2000-2001 onwards.

The CFMEU sought advice from Professor David Cliff, Director of the Minerals Industry Safety and Health Centre, at the University of Queensland as to the appropriateness and relevance of this comparison.

Dr Cliff's analysis is attached to this submission in full.

In brief, however, as Dr Cliff's paper makes clear:

- "it is not appropriate to use Workers' Compensation data for this type of analysis"¹⁰⁸ (not all mining incidents are captured; there is incomplete capture of contractors and sub-contractors; major mining companies may be self insurers; there is no uniform definition and capture of Workers' Compensation data between the states; and so on);
- "when lost time injury statistics are used for analysis over the same time period there is no indication that core states perform any better than non-core states, indeed for most sectors they appear to perform slightly worse"¹⁰⁹
- **"in general Queensland and NSW have performed better than the core states"**¹¹⁰
- "it is important to recognise that there is significant variation between the various mining sectors and each needs to be viewed separately"¹¹¹
- "another issue is the lumping of all major mining states together. The legislative framework in WA is very different to that in NSW and QLD"¹¹²
- when a longer time scale is used "the improvement over the twenty year period is dramatic with a reduction in LTIFR in Qld to 1/20th what it was in 1987-88 in 2008-09 and for NSW it is 1/15th..... (improvements) coincide with the implementation of recommendations from the warden's inquiries into the 1986 Moura No. 4 and 1994 Moura No.2 mine disasters. The major change in Qld post Moura No.2 was the introduction of safety management systems and principal hazard management plans."¹¹³

In essence then, the entire section on potential benefits is so flawed as to require a complete rewrite. Its assertions and conclusions are unsound.

This is not to say that substantial benefits will not be achieved as a result of the introduction of the Model Mine Safety Regulations – particularly if they are amended to bring them into line with the Core Drafting Instructions and existing good practice. However, those

¹⁰⁸ Cliff, Professor David, *An evaluation of the data analysis contained within pages 65 to 69 of the Consultation Regulation Impact Statement for Model Work Health and Safety Regulations and Codes of Practice for Mines*, October 2011.

¹⁰⁹ Ibid

¹¹⁰ Ibid, p7.

¹¹¹ Ibid, p2.

¹¹² Ibid, p4.

¹¹³ Ibid, p11.

improvements are most likely to come in the `core' jurisdictions as they adopt, for example, requirements for Principal Mining Hazard Management Plans that already exist, in a more comprehensive form, in Queensland and New South Wales.

Section 7/Pages 71-72 - Consultation

The decision to exclude regulators in the `non-core' jurisdictions and mining unions has produced a profoundly flawed Consultation RIS. (In addition to all of the issues previously outlined, the Consultation section itself puts forward a very one sided view of some of the provisions contained within the Model Mine Safety Regulations. It is very difficult to see regulators in Queensland, for example, who made changes to their legislation following the incredibly poor communication between shifts which characterised the lead up to the Moura No 2 disaster, endorsing the view that written shift reports will not improve safety outcomes).

It is very important to ensure that future consultation efforts are extended to **all** key stakeholders.

In that context, the survey form at Appendix D to the RIS should be forwarded to the major mining unions for completion. Union Industry Safety and Health Representatives (or their equivalents) are uniquely placed to form a view about the extent of existing compliance with legislative provisions, and of the likely impact of the provisions contained within the Model Mine Safety Regulations. Effective consultation with mining union representatives will ensure that the Decision RIS takes a balanced approach to analysis of the costs and benefits of the proposed Regulations.