



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

Labour and Commercial Environment Group

**Ministry of Business Innovation &
Employment**

on the

**Safe Mines: Safe Workers
Discussion Document**

**P O Box 6645
Wellington
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1. Summary of recommendations

- 1.1. All quarries should be within scope as the size and number of workers at a quarry is irrelevant when principle hazards are present.
- 1.2. The 'all practicable steps' quantification should be removed from the specifications for controlling principal hazards in the Principal Hazard Management Plans (PHMPs) and Principal Control Plans (PCPs).
- 1.3. PHMPs and Principal Control Plans (PCPs) should be formally approved by the regulator.
- 1.4. The establishment of a review procedure in the Employment Court where a smaller group of judges hear workplace health and safety cases and review notices (or directives).
- 1.5. Occupational health risk monitoring should be undertaken by an independent organisation.
- 1.6. We support the establishment of a tripartite mining sector advisory group with equal proportions of union (or worker representatives) and mine operators.
- 1.7. The minimum training requirement for new mine workers should be the existing New Zealand Certificate in Mining (Introduction).
- 1.8. The legislation enables Union Check Inspectors (UCI) which is the recommended title from the Pike River Royal Commission's Report. Check Inspectors be either union-appointed or endorsed by a working party comprising of the regulator and the NZCTU.
- 1.9. Representative functions and powers should be fully specified in legislation.
- 1.10. In addition to the proposed functions and powers, IHSRs must be given copies of any information regarding safety and health management systems, and the power to issue Provisional Improvement Notices.

- 1.11. The NZCTU supports the roles and responsibilities put forward for Mines Rescue and that the funding for this organisation should come from a levy paid by all employers. The Mines Rescue must be the organisation who has the lead responsibility in the event of a mines disaster.

2. Introduction

- 2.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU). With 340,000 members, the NZCTU is one of the largest democratic organisations in New Zealand.
- 2.2. The NZCTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (NZCTU) which represents approximately 60,000 Māori workers.
- 2.3. This submission has been informed by discussion with the New Zealand Engineering, Printing and Manufacturing Union (EPMU). The EPMU merged with the National Union of Miners in 1995. There are more than 1,000 workers within the union working at coal and metalliferous mines, both open cast and underground.
- 2.4. As the collective voice of workers, unions have a critical role in ensuring health and safety. This is recognised by International Labour Organisation Convention 155 on Occupational Health and Safety which mandates consultation between unions (through the NZCTU), employers (through Business New Zealand) and the Government in the design and implementation of health and safety law.
- 2.5. The NZCTU has a long-standing commitment to and expertise in occupational safety and health both as the representative body for the majority of union members in New Zealand and as the representative workers' body to the International Labour Organisation ('the ILO'). As a signatory to ILO Convention 155, the Government is required to consult with the NZCTU (and Business New Zealand) to "formulate, implement and

periodically review a coherent national policy on occupational safety, occupational health and the working environment” (Article 4).

- 2.6. The NZCTU provides full three-stage workplace health and safety representative training. More than 27,500 health and safety representatives have been trained by the NZCTU since 2002.
- 2.7. The recommendations from the Royal Commission of Inquiry into the Pike River Coal Mine Tragedy (‘the Pike River Royal Commission’) should be implemented in full.
- 2.8. The NZCTU was represented on the Independent Taskforce on Workplace Health and Safety (‘the Taskforce’) which released its recommendations in April of this year.
- 2.9. We note the Taskforce’s fundamental emphasis on the importance of tripartitism as a guiding principle throughout the health and safety system. The Taskforce identifies one of the prerequisites of a high-functioning health and safety system as:¹

Tripartism throughout the system

178. Our vision is that tripartism is inculcated throughout the workplace health and safety system. Tripartism involves the government regulator, employers and unions working together to improve workplace health and safety outcomes. The UK has shown respect for tripartism for 40 years. Tripartism is also the dominant model in Australia. The Royal Commission found that a key reason for DoL being an ineffective regulatory body was that it had “no shared responsibility at governance level, including the absence of an active tripartite body”. Tripartism needs to be reflected in engagements between the Government and peak representatives of employers and workers, and in the governance of the regulators. Similarly, the implementation of the Robens model needs to be done on a tripartite basis, with representatives of employers and workers actively engaged in the development of regulations, ACoPs and guidance material.

- 2.10. It is crucial that this lesson is learned and tripartism is not watered down.
- 2.11. We have read the submission made by our affiliate, the EPMU, and fully support it. We intend our submission to be read alongside that of the EPMU.

¹ Report of the Independent Taskforce on Workplace Health and Safety, April 2013, paragraph 178, p. 40.

3. Broadening the Pike River Royal Commission’s recommendations to all types of mining

- 3.1. The NZCTU agrees that the new regulatory regime should cover the entire mining industry along with quarrying and tunnelling. All quarries should be within scope as the size and number of workers at a quarry is irrelevant when principle hazards are present.
- 3.2. The focus on principal hazards provides an appropriate level of flexibility for this wider coverage. Workers in these industries face considerable danger with possibilities of cave-ins, explosions and other catastrophic events.
- 3.3. If quarry size limitations are present then the regulator’s ability to retain discretion to determine that a mine, quarry or tunnel is ‘in scope’ is absolutely crucial. The Chief Inspector of Mines is the person with the appropriate skills, experience and authority to make such decisions, and we suggest this be specified.

4. A new regulatory approach

- 4.1. The Pike River Royal Commission Report in Recommendation 2 recommended an effective regulatory framework that includes “the removal of the ‘all practicable steps’ qualification from the mandatory provisions of the regulations, including those relating to ingress and egress”. It also recommended mandatory requirements in relation to ventilation, engineering and electrical systems. It said ambiguity in the phrasing of minimum standards in the regulations make enforcement difficult. We believe these are crucial steps to more effective regulation which clarifies duties and responsibilities of all those involved.
- 4.2. While we support the proposed process requirement for Principal Hazard Management Plans (PHMPs) and Principal Control Plans (PCPs) we recommend that the content specification that retains the all practicable steps quantification be removed.

- 4.3. We are concerned that the hazard management aspects of the PHMPs will be subject to “all practicable steps” which contrary to the Royal Commission recommendation.
- 4.4. The MBIE proposal is to include control measures that take “all practicable steps” to eliminate, isolate and minimise hazards.² This proposed specification does not address the issue of ambiguity in relation to the management and control of principal hazards. This is repeated in the prescribed process for risk assessments where “all practicable steps” are included when exercising the hierarchy of controls.³
- 4.5. In the context the proposed framework, mines and workplaces that contain principal hazards should at least have their PHMPs and Principal Control Plans (PCPs) formally approved by the regulator, particularly in the design and development stages. This would ensure that sufficient responsibility is assumed by a modern regulator. Check Inspectors with powers to issue notices in relation to the management of hazards, described below, would be an essential element of this system.
- 4.6. The NZCTU supports the new enforcement powers for mine inspectors, including the necessity for some form of review.
- 4.7. However, we are unconvinced that the District Court is the best place for these notices and directives to be reviewed. The issuing of any notices or directives could be of a very specialist nature and the District Court system may not be the best placed to deal with these technicalities. We support the proposal of the Taskforce for a smaller group of judges hearing workplace health and safety cases in the Employment Court⁴. An alternative is a specialist panel of District Court judges.
- 4.8. The NZCTU supports the introduction of mandatory safety-critical roles. We support the proposed role and functions of the site senior executive, requirements for these roles to undertake additional qualifications and

² Safe mines: safe workers, page 23, paragraph 17, bullet point 3.

³ Safe mines: safe workers, Page 23, paragraph 20, bullet point 4.

⁴ Report of the Independent Taskforce on Workplace Health and Safety, April 2013, paragraphs 405-406, p.91.

competencies, and clearer regulation around the presence of supervisors and their responsibilities for all mining and quarrying operations.

- 4.9. Similarly, we support the requirements to have a ventilation officer, an electrical engineering manager and a mechanical engineering manager (at mining and quarrying operations).
- 4.10. The NZCTU notes that a specialist role is not envisioned in relation to the worker health PCP. The responsibility for this PCP must be clear. Worker and industry health and safety representative participation in the plan is critical and should be given a high level of support.
- 4.11. Occupational health risk monitoring should be required to be undertaken by an independent organisation and the results automatically available to workers. Follow-up and control measures for results indicating risk needs to be regulated and enforced. Occupational health risks are often monitored, but this is followed by inaction.
- 4.12. In particular a workplace exposure limit for nanoparticles in fuel additives and diesel particulates needs to be established in regulation. There is clear evidence that diesel particulates are carcinogenic. Nanoparticles give rise to an uncertain level of risk, so a precautionary approach is needed.
- 4.13. We support the establishment of a tripartite mining sector advisory group. Equal proportions of union (or worker representatives) and mine operators are critical to maintain the advisory group's integrity and credibility. In the past the disproportionate makeup of similar groups has led to heavy bias in favour of cost-cutting and favouring the financial bottom line over safety.
- 4.14. The NZCTU supports the proposed transitional provisions in principle, but any extension needs to be agreed with union or worker representatives.
- 4.15. The NZCTU recommends a clear structure of reporting between the Mine Manager and the Site Senior Executive (SSE). The NZCTU shares the EPMU's concerns regarding the SSE being responsible for more than one mine or worksite. If a SSE is responsible for more than one mine there may

be a tendency to prioritise one worksite over another based on its size or location. Further, plans may not be site specific if they are able to be transferable to another worksite.

5. Training and qualifications

- 5.1. The NZCTU agrees with the proposed competencies for safety-critical roles.
- 5.2. The minimum training requirement for new mine workers should be the existing New Zealand Certificate in Mining (Introduction). It is unwise and unnecessary to introduce a lower minimum qualification.
- 5.3. Workers should be required to have comprehensive induction training before commencing work. The cost of induction training should not be a barrier to having fully inducted and supervised workers. All new appointments to specific workplaces should be required to get the full amount of induction training each time.

6. Worker participation

- 6.1. The Royal Commission acknowledged that employees may not have sufficient training to stop work at a mine and may worry that stopping work could jeopardise their employment. Workers need to be able to speak to a person with the right level of independence and power that enables them to speak up about health and safety without fear of reprisal.
- 6.2. The Pike River Royal Commission acknowledges that alignment with Australian and, more specifically, Queensland legislation and regulations would provide New Zealand with a world-leading mining health and safety system.
- 6.3. The NZCTU does not agree that there would be confusion between 'Health and Safety Inspectors' and 'Union Check Inspectors' (UCI) based on their titles. New Zealand has a tradition of having Union Inspectors which were required by legislation before 1992. The title Check Inspector is also recognised broadly throughout Australia.

- 6.4. The Pike River Royal Commission recommended that Site Health and Safety Representatives (SHSRs) have the same powers as Union Check Inspectors (UCIs). However, this is not the case in Queensland. Instead there is a differentiation between a SHSR and a UCI: they have different skill levels and qualifications that correspond to different functions and powers. SHSR and IHSRs should be fully trained to use their powers. IHSRS should be required to hold a deputy's certificate.
- 6.5. The NZCTU agrees that UCIs should be appointed by the union and that this be required in legislation. However we have concerns around the independence of the proposed Industry Health and Safety Representatives (IHSR). If a group of non-union workers choose to appoint their own representative the role's integrity and independence could be compromised.
- 6.6. When the person is a union appointment, the union is open to scrutiny by the fact that the annual accounts are audited and are available to the public.
- 6.7. This is not the same situation where a group of workers are paying for that person. In this situation there is no mechanism to audit how the person is being paid and how the position is sustainable.
- 6.8. In addition to financial issues, the freedom and fairness of the appointment/election process is at stake. Unions are democratic organisations that can achieve a robust process. It is important that workers feel free to stand for the position and to act independently. In contrast, when an employer has influenced the appointment, 'arm-length' independence is threatened.
- 6.9. We believe the best way to ensure the necessary independence and integrity of this position is to state that IHSR must be either union-appointed or have been endorsed by a working party comprising of the regulator and the NZCTU. This group can then ensure that the person chosen is truly independent of the company and will fulfil the role of being the 'extra set of eyes' for the workers as envisaged by the Pike River Royal Commission.

- 6.10. In addition, the functions and powers of SHSRs and UCIs need to be specified in legislation. If they are not, we run the risk of repeating the problems that lead to the Pike River tragedy. Those problems were associated with a system of deregulated representation and participation where ‘free’ negotiations failed workers.
- 6.11. The NZCTU is supportive of the upgraded and revamped proposals around worker participation, however we would encourage the inclusion of all aspects of the Queensland Mining Act, including penalties attributable to non-adherence to the Act and the ability of IHSRs to get copies of any information regarding safety and health management systems. In addition, health and safety representatives should have the power to issue Provisional Improvement Notices.⁵
- 6.12. The Queensland legislation has penalties attributable to non-adherence to the Act. We would encourage these be included. We also envisage that either the SHSR or the IHSR would be able to bypass the mine’s inspector should the need arise and bring apparent breaches directly to the Chief Inspector of Mines for their investigation.
- 6.13. The Queensland legislation is quite specific that the IHSRs are able to get copies of safety and health management system documents, including principal hazard management plans, standard operating procedures and training records. In contrast the proposal is that the representatives receive information/examine documents concerning health and safety. It needs to be more explicit as to the intended coverage, so there is no doubt in the minds of the SSE or Mine Manager that they must supply this documentation.
- 6.14. The Queensland Act allows the Chief Inspector of Mines ability to withdraw directives that have been issued after the problem has been resolved/investigated. However, the proposal here is that the Chief Inspector may overrule the decision. It may result in the same outcome, but the Queensland wording is more supportive of representatives and does not imply that they are incorrectly issuing notices. It also implies that an

⁵ Report of the Independent Taskforce on Workplace Health and Safety, April 2013, paragraph 249(b) p.59

investigation has to occur which would involve all aspects associated within an investigation whereas the ability to overrule does not give that impression. Further, SHSRs and IHSRs should be able to apply for judicial review of the decision to overrule a notice.

- 6.15. In addition to the proposed powers, SHSRs and IHSRs should have the power to issue a provisional improvement notice. Without the power to issue a notice of this kind, the IHSR does not have the required mechanism to intervene if the management of a principal hazard is inadequate. The proposed specified functions and powers of IHSRs should also include those in the Queensland legislation, where IHSRs have been found to be effective. An example of this effectiveness is at Appendix One.⁶
- 6.16. MBIE proposes a comprehensive list of checks and balances for mine operators based on the Queensland legislation while excluding the corresponding powers for IHSRs. This alters the balance of the proposed legislation dramatically in favour of mine operators.
- 6.17. In this context, it is vital that SHSRs and IHSRs are provided with immunity for carrying out their prescribed duties and functions. If this does not occur then mine operators and others can use the threat of legal proceedings to restrict the representatives' ability to undertake their job fully.

7. Emergency management

- 7.1. The NZCTU supports the roles and responsibilities for Mines Rescue, plus the expanded Board membership, put forward in this section of the discussion paper. We support the requirement for every mine to have emergency management processes in place to quickly respond to any emergency that may occur at that mine.
- 7.2. It needs to be made absolutely clear as to who has overall responsibility at a mine disaster. Police took command at Pike River because there was no clarity of roles in mining legislation. Mines Rescue must be the organisation

⁶ Excerpt from statement by the Construction, Forestry, Mining and Energy Union ('CFMEU') republished with their permission.

who takes control in these situations as they have the expertise, training and technical knowledge for dealing with a disaster of this kind.

- 7.3. With the expanded industry coverage, there needs to be a corresponding extension in the number of Mines Rescue bases so that response time is shorter. Industry should pay a levy to appropriately fund this organisation to fulfil its roles and responsibilities, for instance the training of mine workers to ensure there are adequate numbers of individuals able to respond to an emergency.

Appendix One:

Excerpt from the:

**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION, WITNESS
STATEMENT OF TIMOTHY DAVID WHYTE, 28 June 2011,**

To the

Royal Commission of Enquiry into the Pike River Coal Mine Tragedy

On a notable occasion, in particular, the CFMEU determined the very prescriptive legislative requirements for the development of an underground coal mine was not being met in respect of Anglo Coal's Grasstree Underground Coal Mine ("Grasstree") in Central Queensland.

After the Queensland Government's Department of Mines and Energy refused to act on the basis that it believed the mine complied with the legislative requirements, the CFMEU filed proceedings in the Supreme Court of Queensland in its own right under the CSMH Act seeking to enforce these requirements against Anglo Coal.

Anglo Coal had constructed the Grasstree Underground Coal Mine in Central Queensland with one "intake" vertical shaft and one "exhaust" vertical shaft, which were sunk into the same underground roadways but 200 metres apart.

The CFMEU contended that the Grasstree Mine did not comply with Section 296 of the CSMH Regulation. Section 296 of the CSMH Regulation requires an underground coal mine to have at least two trafficable entrances (escapeways) that are separated in a way that prevents any foreseeable event happening in one escapeway affecting the ability of coal miners to escape through the other escapeway.

The Court of Appeal of Queensland upheld the interpretation of Section 296 of the CSMH Regulation 2001 advanced by the CFMEU in *Construction, Forestry, Mining and Energy Union v Anglo Coal (Grasstree Management) Pty Ltd* [2005] QCA 127 and Anglo Coal were required to construct a further escapeway at the Grasstree Mine.