



JOINT SUBMISSION

The Australian Workers' Union and The Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division)

Modernising Work Health and Safety (Mines) Regulations in Western Australia

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INTRODUCTION

1. The Australian Workers' Union and the Construction, Forestry, Maritime, Mining and Energy Union, Mining and Energy Division (**unions**) make these submissions in response to the proposal for the *Work Health and Safety (Mines) Regulation (proposed regulation)* for Western Australia.
2. The unions are the principal representative of workers in the mining industry and also work in an alliance through the Western Mine Workers' Association, representing the interests of mine workers in the Pilbara region.
3. The proposed regulation needs to demonstrate the highest standards of health and safety practices. These submissions will solely focus on health and safety in the mining industry.
4. The current fatality, disease and injury rate in Western Australia's mining industry is unacceptable and measures are needed to bring health and safety practices in Western Australia's mining industry in line with Australia's other major mining jurisdictions, such as Queensland and New South Wales.
5. In New South Wales and Queensland, the mining industry has Industry Health and Safety Representatives who represent all workers in improving and promoting health and safety in mines.
6. These submissions will advocate for the state of Western Australia, the biggest mining state in the country to be on par with Queensland and New South Wales in mine safety.
7. To demonstrate the need for ISHRs in Western Australia our submissions we also draw upon the following:
 - a) a survey by the unions of 274 current Western Australian mine workers,
 - b) a witness statement from:
 - [REDACTED];
 - [REDACTED];
 - [REDACTED];
 - c) A Study of the role of workers' representatives in health and safety arrangements in coal mines in Queensland;
 - d) Data from SafeWork Australia and The Department of Mines, Industry Regulation and Safety.
8. The unions also support and adopt the submissions by Unions WA regarding the National Model Work Health and Safety Regulations.

INDUSTRY SAFETY AND HEALTH REPRESENTATIVES

9. Industry Safety and Health Representatives (**ISHRs**) are representatives of all workers in the mining industry, their role is to improve and promote health and safety in mine

sites by acting as an independent conduit between workers, mine managers and the Regulator.

History of ISHRs

New South Wales and Queensland

10. ISHRs currently operates in the mining industry in New South Wales and Queensland.
11. In New South Wales and Queensland's mining industries, ISHRs (traditionally and still often referred to as 'check inspectors') are nominated by a union and appointed by the Minister for Industrial Relations and Workplace Health and Safety. ISHRs are also used in overseas jurisdiction, including Canada, the United Kingdom and New Zealand.
12. The history of ISHRs in New South Wales and Queensland is a reasonably long one, with ISHRs having existed in various forms since the late 1800s.
13. In New South Wales, due to the high risk and hazards associated with mining, coal miners in the Hunter Valley lobbied for employee elected inspectors in 1870, after similar positions were introduced to legislation in the UK. These were initially inspectors who were paid for by employees and who were mine workers themselves, but in 1904, changes to legislation allowed unions to appoint inspectors who were not employees of the mines.
14. Development of ISHRs followed a similar path in Queensland, with employee elected inspectors being introduced in 1910. Changes to legislation increased these inspectors' powers over time, particularly in 1916 when amendments to legislation improved ISHRs' access to materials, and in 1938, changes to the legislation removed requirements that employee-elected inspectors be practically employed mine workers and allowed for union appointed inspectors.¹

Functions and powers of ISHRs

15. In New South Wales and Queensland, ISHRs represent all workers, whether union members or not. ISHRs are given broad investigation powers and their functions broadly include:
 - a) Participating in investigations into serious incidents and high potential incidents
 - b) Examining documents relevant to safety and health
 - c) Reviewing and implementing safety management systems in mine sites
 - d) Helping with training site safety and health representatives and electrical safety representatives
 - e) Detecting unsafe practices and conditions at mines

¹ For more information about the history of check inspectors see: David Walters and Michael Quinlan, 'Voice and resistance: Coalminers' struggles to represent their health and safety interests in Australia and New Zealand 1871–1925' (2019) 30(4) *The Economic and Labour Relations Review* 513–531.

16. In exercising a power or performing a function, ISHRs can:

- a) Enter and inspect any part of a workplace at a mine
- b) Accompany an inspector during an inspection of any part of the coal mine where workers work
- c) Suspend operations in certain circumstances
- d) Direct a worker to cease unsafe work or issue a provisional improvement notice (PIN) in certain circumstances

17. The authors of 'A Study of the Role of Workers' Representatives in Health and Coal Mines in Queensland' observed there was no evidence of ISHRs misusing or abusing their powers, or using them in an overzealous manner, and in fact the authors were of the view ISHRs were aware of the significance of their powers and used them sparingly. The report found:

"Broadly speaking, our findings lend weight to the conclusion that measures providing for a dual level of worker representation, in the form of both SSHRs at the workplace level and ISHRs at the industry level, are beneficial. The latter work effectively in support of the former and add considerable value to the system overall. They are aided in this support by the enhanced functions and powers given to them by regulation, and we have found no significant evidence to indicate that they misuse or abuse these powers or are over-zealous in their use. It was apparent from the interviews with both types of representative that, far from finding the regulatory strictures on their role confining, they perceive working within them as a means of aiding their legitimacy and that of their actions. Moreover, there is strong evidence from the mines' records we have analysed and the interviews we have conducted that worker representatives devote a substantial part of their OHS activity to addressing serious risks of mining such as those most associated with fatalities in the industry."²

18. In New South Wales, there are 6 ISHRs, in Queensland, there are 7 ISHRs.

19. The following table provides the relevant legislation and sections governing the appointment, nominations, functions and powers of ISHRs in New South Wales and Queensland.

State	Legislation	Sections
New South Wales	<i>Work Health and Safety (Mines and Petroleum Sites) Act 2013</i>	Sections 28 to 36
Queensland	<i>Mining and Quarrying Safety and Health Act 1999</i>	Sections 107 to 121
Queensland	<i>Coal Mining Safety and Health Act 1999</i>	Sections 108 to 124

² David Walters, Emma Wadsworth, Richard Johnstone and Michael Quinlan, 'A Study of the Role of Workers' Representatives in Health and Safety Arrangements in Coal Mines in Queensland' January 2014 <<https://orca.cf.ac.uk/87475/1/qldminesafetyreport0314.pdf>>. These findings have been published in a journal article by the same name, available at: 71(3) *Relations Industrielles/Industrial Relations* 418-441.

Western Australia

20. Western Australia also had 'Employee Inspectors' and 'Assistant Inspectors' who were elected by mine workers across the state through an election process. Employee Inspectors had similar powers and functions as the ISHRs in New South Wales and Queensland.
21. However, on 10 September 2014, the State Government, without any form of consultation abolished the role due to cost of running the election process for nomination of Employee Inspectors across the state. Please see attached the *Mines Safety and Inspection Amendment Bill 2014 Second Reading*.
22. The unions are seeking for Western Australia to have Employee Inspectors/ISHRs with the same powers and functions as ISHRs in Queensland and New South Wales but nominated by the industrial organisation with members in the mining industry. This will alleviate the issues of cost in running elections to nominate Employee Inspectors/ISHRs.

WHY ARE ISHRS NEEDED IN WESTERN AUSTRALIA

Safety in the Mining Industry

23. The mining industry is a high hazard and high fatality industry.
24. ██████████ an ISHR in New South Wales with significant experience in the mining industry provided a statement supporting these submissions, where he states:

"There are certain high risks and hazards, which are only present in mine sites, such as:

 - a) Fire and explosions including machinery fires as well as methane and coal dust fires
 - b) Rock falls, including rocks spalling out horizontally from the face by intense pressure, falls of material from the high walls in underground and open-cut mines
 - c) Outburst of poisonous gas in underground mines
 - d) Dust, such as silica dust causing silicosis"³
25. Western Australia is the country's most unsafe state for mine workers. According to Safe Work Australia, mining is in the top five highest fatality rate industries in Australia for 2014-2018,⁴ and Western Australia had by far the highest number of deaths in the mining industry of any Australian jurisdiction for the same period (see the table of statistics sourced from Safe Work Australia⁵ below).

³ See Witness Statement of ██████████ attached.

⁴ Safe Work Australia, 'Fatality Statistics' <<https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/fatalities/fatality-statistics-industry>>.

⁵, 'Fatality Statistics by State/Territory' <https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/fatalities/fatality-statistics-stateterritory>>.

Work-Related Traumatic Injury Fatalities Report 2014 - 2018, SafeWork Australia

NSW	QLD	VIC	WA	SA	TAS	NT	National total
7	10	2	16	2	1	2	40

26. The report by the Department of Mines, Industry Regulation and Safety (DMIRS) titled 'Safety Performance in the Western Australian Mineral Industry: Accident and Injury Statistics 2017-2018' published the following statistics regarding the cause of fatalities from 2013-2014 to the 2017-2018 financial years period.

Number of Fatalities by Type of Accident 2013-14 to 2017-18⁶

Category		Number of Fatalities
Underground	Rockfall	2
	Caught by machine	1
	Exposure to environmental heat	1
Surface	Struck by object	3
	Caught by or between objects	2
	Fall from height	2
	Caught by machine	1
	Sting from insect	1
	Struck by vehicle or mobile plant	1
	Vehicle or mobile plant rollover	1
	Not yet determined	1
Exploration	Struck by object	1
	Exposure to environmental heat	1

27. Injuries are also prevalent in the WA mining industry. There were 296 serious lost-time injuries reported in the WA mining industry from 1 July 2017 to 30 June 2018, and 318 during 2016-17.⁷ Examples of causes of injuries during 2017-2018 included heavy machinery or equipment falling on workers, basket falling from an integrated tool carrier on a worker, a valve blowing out of a gas cylinder injuring a worker's hand, injuries resulting from machinery being turned on whilst a worker had an arm inside it and a worker being hit by a truck, amongst many other examples.⁸

28. Due to the unique risks associated with mining, health and safety laws in the mining industry have traditionally been developed separately from health and safety laws in other industries. Therefore, proposed regulations must address the unique risks and hazards associated with the industry by including provisions that specify the role and functions of ISHRs.

⁶ The Department of Mines, Industry Regulation and Safety (DMIRS), 'Safety Performance in the Western Australian Mineral Industry: Accident and Injury Statistics 2017-2018' <https://www.dmp.wa.gov.au/Documents/Safety/MSH_Stats_Reports_SafetyPerfWA_2017-18.pdf> 5.

⁷ Ibid, 6.

⁸ Ibid, 6-7.

Evidence

29. The unions surveyed 274 mine workers in Western Australia in November 2019. The survey looked at workers' experiences of health and safety in mine sites in the preceding 12 months.
30. When asked to rate health (including mental health) and safety at their worksites, over 52% of the workers rated health and safety at their worksite as "poor to very poor".
31. The survey results also demonstrated the following concerning trends:
- Over 50% of the workers said that when they raise health and safety issues with their HSR, the HSR is unlikely to challenge management due to fear of intimidation by management.
 - 64% of workers surveyed stated that there were health and safety issues at their worksite at the time of completing the survey
 - 63% said they had experienced poor management when major changes happen at work
 - 58% of workers surveyed stated that operation was valued over safety in their worksites
 - 44% said they had unsafe equipment in their workplace
 - 26% of workers said they had been exposed to traumatic events, distressing situations or distressed or aggressive supervisors/management
 - 37% of workers indicated they experience bullying and harassment at work
 - 30% said they are required to work long and unsociable hours
 - 35% said they often working in unpleasant and hazardous conditions
32. Evidence that the unions have collected also reveals that the number of active HSRs are low in the mining industry and that the HSRs are constantly facing difficulties in improving health and safety as it means standing up against their direct employers in most instances.
33. The survey of mine workers returned the following results relating to the vulnerability of HSRs:
- a) 46% of workers surveyed stated that HSRs are intimidated by management (15% disagreed and 39% did not know)
 - b) Only 35% of workers surveyed said that HSRs are given enough time to do their HSR duties
 - c) 51% of workers stated that HSRs are unlikely to challenge management (19% disagreed and 31% did not know)
34. ██████████ explains in his statement:
- "I am aware that workers who report health and safety issues are labelled:
- a) Troublemaker
 - b) Whinger
 - c) Shit stirrer

- b) "Second, was their reliability. For example, they could be relied upon to provide information and advice".
- c) "Third, there was a strong feeling among the HSRs that the ISHRs understood the difficult situations in which the HSRs found themselves".
- d) "There was a further strong sense of the authority carried by the ISHRs." The authors noted ISHRs could be called upon to intervene and their intervention would carry weight beyond that which the SSHRs could command. "This was seen as indispensable in enabling the HSRs to be effective."¹²

40. In concluding the section of the report, the authors note:

"In summary then, the HSRs were unanimous in their view of the added value provided by the ISHRs in enabling them to undertake their functions effectively and use their powers appropriately. There was no dissent concerning the crucial nature of the support they provided, through training, mentoring, advising and informing the representatives. There was also no dissent concerning the various aspects of their role in engaging more directly with management or with coal workers."¹³

41. ISHRs also play an important role in supporting and supplementing the work of inspectors from the Regulator. In his statement, ██████████ explains the relationship between ISHRs and the New South Wales Resource Regulator:

"The Resources Regulator (Regulator) has limited resources and time to resolve all WHS issues raised by workers in the dangerous mining industry.

Further, inspectors from the Regulator do not have a relationship with workers that ISHRs have built over time.

Currently, ISHRs has the power and functions to perform several of the tasks that are carried out by the Regulator.

The availability of ISHR's reduce the heavy workload that inspectors have. If ISHR's are removed, the Regulator will be overwhelmed, as its inspectors will have to perform the current work that ISHRs have been performing for over a century.

There is also a financial reward to the Regulator by having ISHRs. For example, workers can take issues to ISHRs first, and in most instances the issue is investigated and resolved.

WESTERN AUSTRALIA – LARGEST RESOURCES STATE

42. DMIRS' statistics provide insight into the size and activity of Western Australia's mining industry. These statistics demonstrate Western Australia undoubtedly has Australia's largest mineral and petroleum mining industry, representing an estimated 69% (approx.) of Australia's total mineral and energy exports. Western Australia also

¹² Ibid 46-47.

¹³ Ibid 50.

accounts for 61% of Australia's total mineral exploration expenditure and 58% of total petroleum exploration expenditure.¹⁴

43. The average number of individuals employed in the minerals sector during the 2018-2019 financial year period was 124,010.¹⁵
44. The Western Australian State Government received royalty revenue from the state's mineral and petroleum producers totalling over \$5.6 billion in 2018-19. The State Government also received \$889 million in grants for the North West Shelf project, bringing total revenue to over \$6.5 billion.¹⁶
45. The Western Australian Government receives significant royalties from mining and should use these resources to ensure the highest standards of safety and health for our workers in mine sites.
46. ISHRs are crucial in improving safety and health in our mining industry, especially as Western Australia has the largest mineral and petroleum mining industry in Australia and unfortunately the highest fatality rates in the mining industry.

CONCLUSION

47. Mining is a high hazard and high fatality industry and Western Australia is the most unsafe state for a mine worker.
48. ISHRs are crucial in the mining industry as they improve health and safety at mine sites by conducting independent investigations and in ensuring safety and health issues are addressed.
49. The unions' evidence demonstrated the need for ISHRs by showing that:
 - a) the high proportion of mine workers in Western Australia consider health and safety at their worksites to be very poor;
 - b) the number of active HSRs are few and they face challenges, including intimidation by management and insufficient time to perform their roles; and
 - c) ISHRs help to overcome health and safety issues and are independent.
50. Further, inclusion of ISHRs in the *Workplace Health and Safety (Mines) Regulations* will bring Western Australia in line with health and safety practices in New South Wales and Queensland that have been in place since 1870.
51. Western Australia's mineral and petroleum mining industry is the largest in Australia, and employs a huge number of workers. These workers work in hazardous conditions and the State Government receives significant royalties from their work.
52. Despite the contribution our mine workers' make, the current fatality, injury and disease rate in the industry remains unacceptably high. The unions believe Western Australia's

¹⁴ 2018-19 Economic Indicators Resources Data available for download from: Department of Mines, Industry Regulation and Safety, 'Latest statistics release' <<https://www.dmp.wa.gov.au/About-Us-Careers/Latest-Statistics-Release-4081.aspx>>.

¹⁵ Ibid.

¹⁶ Ibid.

mine workers and their families deserve the highest standard of protection, and to achieve this, ISHRs must be included in our mining health and safety framework.

Attachments:

1. Witness Statement of [REDACTED]
2. Witness Statement of [REDACTED]
3. Witness Statement of [REDACTED]
4. 'A Study of the Role of Workers' Representatives in Health and Safety Arrangements in Coal Mines in Queensland' by David Walters, Emma Wadsworth, Richard Johnstone and Michael Quinlan.
5. Mines Safety and Inspection Amendment Bill 2014 Second Reading.

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