

Draft Work Health and Safety (Mines) Regulation

Public comment template

Please send submissions by email to consult.minesafety@trade.nsw.gov.au Submissions must be received by **27 June 2014**.

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Please indicate here by a tick if this submission or any parts of it are provided in confidence.

Whole submission Address and contact details Part (please specify) "

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This template is divided into two parts:

1. Comments in response to discussion paper
2. Comments in relation to draft regulation

Please ensure you include the page, section number or regulation clause number to which your comment relates. Your submission should, wherever possible, include evidence and examples to justify your position.

Part 1 - Comments in response to discussion paper

Page or Section No.	Discussion point and your comment
2 p15	Will contract maintenance such as belt repairs have to supply a safety management system and not simply do a JSA?
	Aero magnetic surveys(non mechanical), or simply aerial photographic surveys, including flights with a drone aircraft, should not be covered by the application of the new WHS (Mines) legislation.
3.3 p16	Coal mines having to notify regulator of "any" change to an SMS seems very onerous and has to be spelled out to what extent it is intended.
3.4.1	The inclusion of subsidence as a principal mining hazard is reasonable.
3.6	"mining operations" include activities carried out in connection with mining activity. A contractor might be a one man operation to

	fix a leaky tap for example. It would not make sense that he has to submit a full contractor health and safety management plan. This needs to have some reasonable cut-off defined. Surely this does not apply to a contract office worker. Does it apply to maintenance labour hire that should really work under the site's SMS?
3.7	Why do we need "signage relating to air monitoring and warnings"? This seems extreme and we fail to see why it is necessary.
3.7.1	2.5 mg of respirable dust per cubic metre of air is acceptable.
3.8	Minor changes to ventilation should be allowed without having to go through modelling each time. Not everyone has a ventilation engineer on tap.
3.11	12 months is definitely not sufficient time for change to oxygen self rescuers. We categorically object to being forced to change from our risk based philosophy in the first instance, and if the department is unreasonable and will not allow an exemption, then a phase in period of 5 years would be the minimum acceptable. We have recently just purchase new non oxygen self resuers and find this provision onerous, high cost impact and has not been thought out well. For example the provision for a test unit was asked of the supplier and they know nothing about it. So we have a situation where the regulator is attempting to make a change stating the use of a training unit that does not exist according to an MSA representative.
3.11.3	The inclusion of notification to regulator of proposed emergency plan testing - AGREED
	The inclusion of requirement to notify regulator of activation of emergency plan if no notifiable incident - DISAGREE
3.12	Display of H&S information already occurs, however there is so much information that it cannot be displayed indefinitely. Mandating this is only going to clog up the noticeboards, and provide confusion.
3.21	5 year refresher courses for underground mine manager – Agreed provided it is not assessment based.
	Removal of 'for life' practising certificates – DISAGREE. I have had Mine Manager's certificates in different states for over 30 years and had to sit laborious examinations in different states because there was no mutual recognition. For the Western Australian First class Mine Manager's certificate, I was not even allowed to sit for it until I moved to WA and resided in the state. I object to the idea that a hard-earnt qualification should be subject to a periodic renewal process. No changing of the rules half way through thank you very much.
	Periodic reviews and audits of certificates should be something an Inspector can make a determination on when he visits sites and gains an impression on the competence or otherwise of a person filling a statutory position - AGREED
3.21.2	Renewal of practising certificate – DISAGREE – believe it should be "for life"
	Non PCBU to do duties of SSE - AGREE
	Underground mine supervisor statutory function - AGREE
	3 year transition for SSE – AGREED provided regulator will recognise interstate SSE qualifications and grant practising certificate immediately on passing of legislation.
	I fail to see the necessity for statutory function of radiation safety officer – DISAGREE with this particular one.
3.21.3	Direction to statutory function holders depends on the competence of the person giving direction, for example and SSE with a mine managers qualification should be competent to give direction to an underground supervisor. This is perfectly covered in the Queensland coal mining s&H act Sec 60 (6) "A person must not give direction to a underground

	mine manager (UMM) about a technical matter in relation to an underground mine unless the person has a first class ticket". So any prohibition clause for a technical area must have an out where a person with the required competence can override.
5.1	Election process for MSHR should be secret ballot after written nominations from workforce.
5.2	High risk licence for forklift - AGREED
Part 2 - Comments in relation to draft regulation	
Clause number	Title of clause and your comment or suggestion
16 (1) (a)	<p>This clause means that the mine operator of a mine is not allowed to change his own Safety Management System without permission. We are for example changing SOP's on a regular basis and this clause would prevent us from modifying our system as required. A perceived risk could not be acted upon without written permission from the regulator who would most likely have only a limited understanding of the situation without travelling to site to gain an understanding of the problem. This can lead to the regulator recommending to the Compliance and Enforcement Unit for a possible prosecution on a matter that the mine does not believe is worthy of the regulator's attention.</p> <p>The other part to this is that there is no stipulated time frame for the regulator to respond, and hence this will unnecessarily impede the course of normal business. If this section is persisted with, there must be a timeframe for response which must not be more than 7 days.</p>
25	<p>Are we required to change the names of our plans. For example will we have to change our "Explosives Management Plan" to be called "Explosives control plan" as suggested in (25) (6).</p> <p>If so are we required to obtain regulator permission as per Sec (16) (1) (a)</p>
29 (2) (d)	<p>Inspection of belt conveyors every 8 hours does not provide for longer shifts. We operate 12 hour shifts so it would be more logical to require belt conveyors to be inspected every "shift".</p>
37	<p>An apprentice may be required to accompany a fitter for example underground to do work. It is not always possible that the supervisor goes underground as well. An apprentice under 18 may be of sufficient experience in underground situations that he is able to drive underground to the work area unsupervised. The actual job could then be supervised by the operator requiring the work. This needs to be elaborated to include mention that the supervision duties can be delegated, and also that the apprentice may drive underground to the work site unaccompanied if it is deemed that he has sufficient experience to do so.</p>
34 & Sched 3 (3)	<p>Notice period to notify for electrical work. The waiting period is 7 days and this has no exemptions. This means an electrician cannot "test for dead" unless he notifies 7 days in advance. Part of the procedure after de-energising a circuit is to test for dead before doing work. This needs to be included as an exemption. Otherwise we have an unsafe practice and an unworkable one. Refer Bernard Gittens for clarification on this matter.</p>
53	<p>This would be worthy of an explanation note. If a risk assessment does not specify ground support, then it is permissible to travel say for example inspecting old workings in competent ground and also needs a clause to allow such travel in case of emergency such as to rescue someone. It would be criminal to prosecute someone who rescued a workmate and in the process travelled</p>

	under unsupported ground.
60 (4) (b)	This clause allows no flexibility for Inspectors if below the standards in sec 54. (eg machines shutdown. A second truck could park short of the actual bogging area and hence the airborne contaminants go into the exhaust air away from the heading being bogged. The other alternative is for the second truck to park and switch off so that it is not contributing to the airborne contaminants.)
61 (1)	There is currently no alarm on the surface vent fan and if there was there would not necessarily be someone on the surface to respond to it. For a metal mine without the risk of methane build-up, it is generally noticeable underground when the main fan goes off, even though there is a natural circulation that does occur. If an alarm was to be installed, such as with our explosives magazines, there is not mobile coverage to receive the information.
63 (3) (e)	We have only one way to operate the main fan and that is with electricity. In the event of a loss of power supply, we evacuate the mine. This clause does not provide for this arrangement and we are unable to comply. This clause is considered as onerous and a restrictive business practice. It needs to include the alternative of evacuating the mine.
65 (3)	Review and revise vent plan monthly is too strict. In our case where changes to underground ventilation are minimal, a “review” would be a minimum of 3 months and a “revise” would be annual with a full vent survey. You definitely should not have to do a new vent plan every month as the wording suggests “revise”. The Federal Government is proposing reducing red tape and this is contrary to that intent. There is some validity in coal mines where this has been driven from Queensland review of Pike River disaster, but has little relevance to underground metal mines where the fire risk from methane explosions is minimal and the ventilation of working areas is checked daily. Any noticeable difference in ventilation is soon discovered in metal mines. It should also be noted that small mines generally do not have dedicated ventilation officers and hence we run the risk of diverting supervisors from the real job of supervising and looking after worker safety.
95 (5)	Section 5 allows for single exit in either of two circumstances. Both of these preclude stoping such as long hole retreat stoping, from a stope that is more than 250 metres from the mine entrance for a single entry drive. This is impractical in our case because our development heading is more than 250 metres. This also does not take into account having a rescue chamber at 750 metres. Retreat long hole stoping means there is only one way out of the stope and hence is not excessively different to (a) a single entry drive or shaft is being developed”. This section should have the words included “where reasonably practicable” as per historic legislation. The control is really the experience of the Inspector.
99	We operate W95 particulate filters and do not operate oxygen self rescuers. A risk assessment at site has determined that the shallow depth and competent ground of the mine does not require the self rescuers to be oxygen. The time period for change would not be long enough, plus there is no identified need. An exemption clause is required for this something along the lines of “unless an Inspector approves an alternate self rescuer”. The testing regime of the oxygen self rescuers is way over the top and will be a huge cost impost. Is there evidence that video and personal demonstration as previously used, has resulted in injury in the past.
101	This section does not allow for a supervisor to do a pump inspection in the main decline during shut down periods when the surface operations have stopped. In such cases it should be permissible to use the man working alone policy where the supervisor is in contact with a person on the surface but not necessarily on site.

103 (3)	We would like clarification on this point that for example is job start check training sufficient. We would like assurances that the regulator is not expecting people to do courses like GMIRM.
121 (2)	This states certification by “a mining surveyor at the mine”. We do not have a mining surveyor at the mine, but employ an external surveyor from time to time. This clause needs to be amended to include contract mining surveyors on a part time basis.
121 (4)	Surface plans are now done by aerial survey to show current workings, dams etc, and there should be provision in this clause to allow for the topographical plans that are produced by this method. I am not sure of how or of these plans are certified.
127 (4) (j)	“misfire” should be changed to “significant misfire”, because you would not expect to notify the department if one hole in a shot did not go off.
177 (a) (x) 127	If an unintended interruption of the power supply to the mine occurs, then the main fans go off. Does the inspectorate really want us to give a report in writing as per 127 (4) every time the power goes off. This seems over the top and will bog down the Inspectors in paperwork. Also do you want verbal notification as per clause 127 (1) which states notification should be “as soon as possible”.
Schedule 3 (3)	We seek a clarification on what is “electrical work”. We believe this should exclude “test for dead” where a competent person is simply checking that an electrical circuit has been de-energised by “testing for dead” prior to doing any maintenance work for example. It does not make sense that “test for dead” is a high risk activity and 7 days notice is required. In this case, all mines will stop when they have to do maintenance work.
Schedule 3 (6)	The 3 month waiting period for a new mine entry seems excessive. Activities such as raise boring for example should reasonably be assessed by the regulator with only one months notice.
Schedule 4 (1)	We believe there should be an exception in metalliferous (non-coal) mines in emergency situations and risk assessed where portable petrol engines for pumping may be used to manage excess water, such as a decline filling up as a result of the main electrical pumping system failing. Portable diesel pumps are not always readily available.
Schedule 10 (6) (5)	As per 121 (2). Can this be clarified that “20 workers” means “20 underground personnel”. We do not employ a permanent mining surveyor.
Schedule 10 (7) (b) (iii)	The requirement for an electrical tradesperson to “have been continuously employed as an electrical tradesperson at a mine since 20 December 2005” will preclude many electricians from fulfilling this role. It is an ‘or’ clause but there may be some competent electricians who should be given a lesser timeframe.