

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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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
	No comments.

Part 2 - Comments in relation to draft regulation

Clause number	Title of clause and your comment or suggestion
9	This clause contains onerous requirements to record risk assessments and include them in the SMS. This could be interpreted to include all take 5s, JSAs etc. We recommend that the clause be re-worded to limit these requirements to risk assessments that support the PMHMPs and PCPs.
9(6)(a)	Re-word to <i>"a mine operator must keep records of risk assessments that support the PMHMPs and PCPs, these assessments will form part of the safety management system and the records of the mine."</i>
9(6)(b)	Re-word to <i>"a contractor must keep records of risk assessments that support the PMHMPs and PCPs, these assessments will form part of the contractor health and safety management plan."</i>
15(a)	Remove the words <i>"all aspects"</i> . Creates a requirement that is unachievable as creating specific measures for every aspect of an SMS would be impractical to sustain.
16	As the SMS has been significantly increased by this legislation, giving notice <i>"before any change"</i> is unrealistic. This needs to be deleted, or limited to specific types of changes or significant changes (with 'significant' defined).
23(3)(f)	Should be simplified to <i>"describe how control measures are to be implemented to manage hazards to health and safety associated with the PMH"</i> .
23(3)(i)	Could be interpreted as requiring mines to retrospectively obtain information about existing controls. The words <i>"each control measure"</i> should be replaced with <i>"new control measures"</i> .
26(5)(b)&(c)	Reviewing and providing written notice is very prescriptive and would be onerous for large operations. Should be removed and replaced with <i>"The mine operator must have a system for reviewing contractor health and safety management plans and monitoring compliance with those plans"</i> .
26	Clause 26 should include a process that allows contractors to work directly under the mine's SMS – particularly small businesses.
27	Communication between outgoing and incoming shifts – Clause 27 should be deleted and replaced with <i>"the mine operator of a mine at which more than 1 shift is working each day must implement a system to communicate information in relation to the state of the mine workings and plant and any other matters that relate to work health and safety from the outgoing shift to the incoming shift."</i> The current clause does not allow for the implementation of new technology or current best practice. It is also prescriptive.
29(d)	Operation of belt conveyors – The current clause is not practical for surface belts and coal preparation plants. Clause should be replaced with <i>"must ensure that there is a system for regularly inspecting belt conveyors by competent people, including but not limited to: (i) a schedule for conducting inspections that is relative to the risks associated with operating those belt conveyors. (ii) inspecting belts that have been shut down due to the presence of any overheating, smouldering or other condition likely to cause a fire (iii) in the case of underground mines, inspecting operating belts at least twice per day at an evenly spaced time interval."</i>
31	Seismic activity is a risk in relation to strata and ground stability; it should be included with those processes. Clause 31 should be removed from the body of the regulation and relocated to item (1) ground and strata instability of 'Schedule 1 Principle mining

	hazard management plans - additional matters to be considered'.
33(2)(b)(ii)	Notification of testing – Impractical, not required by any Standard or Code of Practice, not currently done in any industry. Coal Mines use competent electricians who are capable of energising a circuit.
33(2)(e)(iv)	Providing training to every person on every piece of electrical plant is not practicable. The word " <i>trained</i> " should be replaced with " <i>competent</i> ".
33(2)(i)	Mines use mains power portable electrical equipment that operates above 250V e.g. welders, belt splicers. " <i>250 volts</i> " should be changed to " <i>450 volts</i> ".
33(2)(m)	Electrical switchgear and protection devices used in mines have not been assessed in accordance with IEC 61508. There are other mechanisms available to determine that a control is sufficient e.g. compliance to Australian Standards, MDGs etc. Re-word as " <i>that any electrical safeguards provided to control the risk from both electrical and non-electrical hazards are sufficient for the level of risk being controlled, and</i> ".
33(2)(o)	It is not practical to have earth leakage on ALL circuits. Guidance provided by AS4871 and AS2081 and this topic should be left to those. Re-word as " <i>that any electrical safeguards provided to control the risk from both electrical and non-electrical hazards are sufficient for the level of risk being controlled, and</i> ".
34(6)	The industry safety and health representative is notified under Clause 34(3)&(6). This is unnecessary and the subclause should be deleted.
37	Clause 37(1)(b) does not account for trainee miners that may be required to operate mobile equipment or trainees/apprentices required to retrieve materials or tools from a location other than the immediate work area. This also assumes that competency is age related which it is not, any provisions should include a process that acknowledges competency. Delete Clause 37(1)(b) and Clause 37(2). If clause 37(2) is not removed, it should be re-worded to " <i>remains close to</i> " rather than " <i>within sight of</i> ".
44	Clause 44 should include " <i>so far as is reasonably practicable</i> ".
45	Clause 45 should include " <i>so far as is reasonably practicable</i> ".
85	'Subdivision 4 All coal mines' is under 'Division 5 Specific control measures - underground mines', this should be a new division not a subdivision.
85(2)(b)(ii)	Delete "any part of the mine" replace with "any accessible part of the mine". Not practical.
85(2)(b)(iii)	Should be an underground coal mine requirement only. Add " <i>in the case of an underground coal mine</i> " at the beginning.
85(4)	Delete " <i>at least once every 8 hours</i> " and replace with " <i>at least once every shift (maximum 12 hours)</i> " to account for operations that have 12 hour shifts.
85(9)	" <i>whole of the production area</i> " required to be inspected after an interruption - if interpreted as after a rain interruption at an open cut, would be very difficult to comply with. Replace " <i>whole of the production area</i> " with " <i>immediate work area</i> ".
85(11)	Replace " <i>place of work</i> " with " <i>immediate work area</i> ", place of work could be interpreted as the entire mine site.
87(2)(a)(vi)	Transport may not be available in all areas. Following the word evacuation add " <i>(so far as is reasonably practicable)</i> ".
88(2)	As emergency service organisations are not necessarily familiar with mining specific issues, their recommendations may not always be practicable. Replace the word " <i>addresses</i> " and with " <i>considers</i> ".



94(b)	Workers may not need to know all of the detail in the plan, this could in fact reduce the retention of what is important. Add at the beginning of this point <i>"receive relevant training or information..."</i>
104	Replace <i>"all aspects"</i> with <i>"relevant aspects"</i> . Example of where this would be too broad would be giving a Washery operator training in how to operate a production dragline.
108	Order 41 should be revoked as it creates a duplicated requirement for coal mines.
111(2)	Delete and replace with <i>"if the mine operator has not engaged a worker at the mine, the PCBU that engaged that worker must pay expenses relating to health monitoring"</i> .
117(a)	Only significant adverse health effects should be reportable and whether it is significant or not should be determined by the medical practitioner. Change <i>"any adverse health effect"</i> to <i>"any significant adverse health effect"</i> and replace <i>"from exposure to a risk associated with mining operations"</i> to <i>"from an exposure associated with mining operations"</i> .
117(b)	Add to the end of this point <i>"as a result of a health effect from an exposure associated with mining operations"</i> .
119	Delete from Part 4 title <i>"and worker's safety role"</i> as the employment of a safety role is a business decision. If this means that each worker has a safety accountability then it should be a duty on the worker not the mine operator.
119	Delete and add the identification of principle mining hazards from (a) to clause 120, (b) & (c) are covered by clause 120 (b) & (c), add (d) to clause 120. Should be covered by consultation or set as a requirement in the section on PMHMPs.
120(e)	See recommendation from Clause 119. Clause 120(f) delete as this is covered by (a).
121(4)	Delete <i>"(if present at the mine)"</i> and replace with <i>"(if present and known at the mine)"</i> . Some of the information in this clause may not always be known (e.g. boreholes).
127(2)	Current practice allows verbal notification within 24 hours and written notification within 7 days. Add to the end of this point <i>" unless verbal notification is made within 24hrs then the notification set out in (3) below must be made within 7 days"</i>
127(4)(a)	Linking this part of regulation to clause 177(a) has some unpractical outcomes e.g. the incidents listed in 177(a)(xiii) would require us to report every collision between anything that occurs onsite, and 177(a)(xv) would require us to report every single plant or structure damage. Delete this point and replace with <i>"a dangerous incident that did not result in an injury or an illness"</i> - the definition of a dangerous incident is sufficient.
127(4)(k)	Delete as this clause will capture events that should not require notification e.g. if the phone system malfunctions, and you withdraw from a section in the mine (which is a control to prevent another risk from occurring), this should not need to be reported. All items that create an imminent risk to health and safety already need to be notified.
128	Add <i>"due to health and safety reasons"</i> to the end of clause 128(1)(b). This is too broad. Replace <i>"A notice given under this clause"</i> in 128(6) with <i>"A notice given under this clause to the regulator"</i> . The detail in (6) should not be required to be provided to the industry safety and health representative.
134	Electrical and Mechanical Tradesmen should be deleted from the list of statutory positions. Mines have appointment systems with greater detail than just a broad appointment to perform/supervise electrical or mechanical work. Tradesmen currently receive appointments for each type of work that they are approved to perform e.g. high voltage switching or high pressure hydraulics. This is consistent with 'Schedule 2 – Part 3 – Clause (1) – electrical engineering control plan... (d) the competency by workers to safely work on electrical plant or electrical installations at the mine'. Competency of tradesmen is covered by Order 34. Minimum



	competency requirements could be detailed in 'Part 2 Division 7 information, training and instruction'.
134	The statutory functions of Mining, Electrical and Mechanical engineering manager dictates a mines management structure taking away the flexibility created by Part 2 Division 1 Subdivision 3 Clause 14. Re-word as <i>"to establish and monitor the mining/electrical/mechanical engineering systems and standards for operations at the mine"</i>
150(c)(i)	Following the word repairing add <i>"(repairing does not include the replacement of components)"</i> . Tradesmen can currently replace components.
158(1)	Particular employer associations or unions should not be directly specified in legislation. It should require an employer and an employee representative of the coal sector, metaliferous sector and quarries sector.
159	Delete <i>"to advise the Minister of any matter"</i> . This is the role of the Department of Trade Investment (the Minister's Department) and the wording used is too broad.
162(1)&(2)	Particular employer associations or unions should not be directly specified in legislation. It should require an employer and an employee representative of the coal sector, metaliferous sector and quarries sector.
177(f)	There may be occasions where plant is deliberately overturned as part of normal operations and maintenance. Re-word <i>"the overturning of any vehicle or of plant weighing more than 100 kilograms"</i> to include the word <i>"unplanned"</i> e.g. <i>"the unplanned overturning..."</i> and move to 177(a). Mass should be increased from 100 to 1000 kilograms.
177(a)(xvii)	See comments for Clause 127(4)(m)&(n) above.
180	<i>"regulator may determine a fee for any service provided by the regulator"</i> - extremely broad definition and does not include any elements of consultation.
Schedule 3 Part 1(3)	Electrical work on energised electrical equipment – As defined in the WHS Regulation, this includes testing for the purpose of proving isolation (Clause 157). A notification and waiting period on this type of task is impractical. This requirement is not part of any Australian Standard or Code of Practice and is not required of any other industry (including electrical trades or electrical powerline work). Coal mines use competent electricians who are capable of safely testing for the purpose of proving isolation or performing live testing with appropriate risk management processes in place. Add <i>"(4) For the purposes of this clause electrical testing is not considered electrical work"</i> .
Schedule 3 Part 2(7)	If equipment is rated for this voltage and the provisions of this regulation are applied it should not be considered a high risk activity. This clause should be deleted.
Schedule 10 Part 2	(4) Delete <i>"under the direction of a mining engineering manager"</i> - reporting to the Mining Manager is often not direct. (6) Electrical Engineering Manager. Delete duty to <i>"control and manage"</i> and replace with <i>"establish and monitor"</i> . (7) Electrical Engineering Manager. Delete duty to <i>"control and manage"</i> and replace with <i>"establish and monitor"</i> . (8)(b)(iii) delete subclause requiring continuous employment since 21 December 2004 - length of service doesn't prove competency