

## Draft Work Health and Safety (Mines) Regulation

### Public comment template

Please send submissions by email to [consult.minesafety@trade.nsw.gov.au](mailto:consult.minesafety@trade.nsw.gov.au) Submissions must be received by **27 June 2014**.

**Confidentiality:** Any information that you do not wish to be made available to the public should be clearly marked 'IN CONFIDENCE'. Submissions are subject to all relevant laws such as the Government Information (Public Access) Act 2009 and the Privacy and Personal Information Protection Act 1998. NSW Trade & Investment may provide extracts of submissions to other stakeholders for comment during the review of public submissions.

**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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\*\* RiskComp Pty Ltd is a small consulting company, specialising in the following areas in the mining industry:

- General WHS consulting
- Training, assessment and competency systems
- Facilitation of risk management processes
- Leading and reporting of HPI investigations
- Auditing – systems and compliance.

## Part 1 - Comments in response to discussion paper

Page or Section No.	Discussion point and your comment
pp. 17-18	<p><b>3.6 Contractor management</b></p> <p>The proposed arrangements for contractor management are a sensible integration of the WHS roles / responsibilities of the mine operator and the contractor. The requirement for a contractor to have a healthy and safety management plan (HSMP) for the work to be undertaken addresses their responsibility as the PCBU for the health and safety of their workers. The requirement for the mine operator to review the contractor's HSMP, and give the contractor written notice that the HSMP is consistent with the mine's SMS is a sound way for the mine operator to ensure that the contractor has an adequate HSMP for their workers, and have adequately addressed the risks which may be encountered in undertaking the work at the mine.</p> <p>I support the development of a code of practice for 'Contractor management' to assist mine operators and contractors – see my comments with respect to section 4 <i>Mining codes of practice</i> below.</p>
p. 27	<p><b>3.12 Information, training and instruction</b></p> <p>Clause 102 <i>Duty to inform workers about safety management system</i> requires the mine operator to (1) provide workers with a summary of the key components of the mine's SMS (the SMS, PMHMPs), (2) inform workers of the right to access SMS documents, and (3) ensure that these documents are readily accessible to workers.</p> <p>Clause 103 <i>Duty to provide information, training and instruction</i>, sub-clause (2) (a) to (e) provides a list of items on which the mine operator must provide 'suitable and adequate' information, training and instruction to workers at the mine.</p> <p>In my recent experience, mines (both large and small) have very effective arrangements in place to provide information, training and instruction to workers regarding the SMS, and any changes to the SMS. This includes induction training, pre-shift briefings, tool-box talks, refresher training / re-assessments, refresher safety training sessions, etc.</p> <p>Given the comprehensive and multi-layered approach that most NSW mines currently have in place to provide information, training and instruction, the inclusion in the Regulation of a need for the '<i>... display of health and safety information in a prominent place in a workplace and requirements for mine operators to take all necessary steps to draw it to the attention of workers</i>', seems to be unnecessary.</p> <p>Clause 103 <i>Duty to provide information, training and instruction</i>, sub-clause (3) requires the mine operator to '<i>... ensure that each worker at the mine is trained and assessed as being competent in basic risk management techniques. Such training and assessment must occur before a worker commences work at the mine ...</i>'. In my opinion, this is a worthwhile requirement, and reflects the current training and assessment in this area by 'better practice' NSW mines. However, the requirement that this training and assessment must occur '<i>... at least once every 5 years ...</i>' after the initial training, is a</p>

	<p>somewhat antiquated provision, reflecting an outmoded notion of time-based re-training / re-assessment.</p> <p><u>Suggestion</u> – the requirement in the Regulation for training and assessment in basic risk management techniques to occur ‘... at least once every 5 years ...’ after initial training and assessment, be replaced with a requirement for the mine operator to ensure ‘maintenance of competence for each worker in basic risk management techniques’.</p>
<p>p. 34</p>	<p><b>3.21 Statutory functions</b></p> <p><i>In response to the Pike River Royal Commission Report, stakeholders are asked to consider:</i></p> <ul style="list-style-type: none"> <li>• <i>whether five-yearly (or at least regular) accredited ‘refresher courses’ be required for underground mine managers to ensure their ongoing competence</i> – It would not appear necessary to have requirements in the Regulation relating to the maintenance of competence requirements for one specific statutory position. The current provisions in the draft Regulation have adequately addressed the mechanism for the establishment of maintenance of competence requirements for all statutory positions. The scope of the means by which maintenance of competence requirements may be specified are outlined in <i>Division 3 Practising certificates, Clause 141 Conditions</i> – including ‘(c) undertake and successfully complete specified training courses or other specified forms of training’. In my opinion, it is best left to the Mining Competence Board (MCB) to advise the regulator on the appropriate requirements for maintenance of competence for all statutory positions. In establishing the requirements for underground mine managers, the MCB may take into consideration the issues identified in the Pike River Royal Commission Report.</li> <li>• <i>that practising certificates not be issued to individuals ‘for life’</i> – I strongly agree with this statement. The draft regulation addresses this issue, with practising certificates issued for a maximum of 3 years, and the ability for the regulator to require the holder of a practising certificate to meet conditions relating to maintenance of competence requirements</li> <li>• <i>certificates of competence or practising certificates be subject to periodic audits and reviews by the regulator.</i> I also strongly agree with this statement. To maintain the integrity of the system of issuing and renewing certificates of competence and practising certificates, it is essential for the regulator to have processes to monitor the veracity of the statutory positions scheme (i.e. audit), and consider appropriate improvements (i.e. review).</li> </ul>
<p>p. 34</p>	<p><b>3.21 Statutory functions</b></p> <p><i>The regulator proposes there be a transitional period of two years from the start of the WHS (Mines) Regulation in respect of all relevant statutory functions requiring a practising certificate except for deputy, open cut examiner and quarry manager (for mines with fewer than 20 workers), for which the transitional period will be three years. During this period existing certificates of competence will be deemed to be practising certificates with all of the practising certificate arrangements applying to the deemed certificates of competence. Therefore, people who are currently eligible to perform a statutory function by virtue of holding certificates of competence will be able to continue performing the role with a ‘deemed practising certificate’ during the period. Once the period expires, these people will need to apply for practising certificates. Their current certificates of competence will continue to make them eligible for the relevant certificates of competence.</i></p>

	<p>The transitional period for relevant statutory functions requiring a practising certificate (either 2 or 3 years) is a sound way to manage the transition to the new arrangements. This provides time for the Mining Competence Board to develop the requirements/conditions for renewal of practising certificates, advise the regulator, and for the new requirements to be gazetted.</p>
p. 35	<p><b>3.21.2 New statutory functions</b></p> <p><b>Discussion points:</b></p> <p><i>Is three years an appropriate period before a practising certificate should be renewed?</i></p> <ul style="list-style-type: none"> <li>· Yes, this appears to be an appropriate time-frame.</li> </ul> <p><i>What are stakeholders' views on whether a person who might not otherwise be an officer of the PCBU should have the duties of an officer under the WHS Act by virtue of being the site senior executive of the mine?</i></p> <ul style="list-style-type: none"> <li>· No opinion on this issue.</li> </ul> <p><i>What are stakeholders' views on the adoption of the underground mine supervisor statutory functions?</i></p> <ul style="list-style-type: none"> <li>· I agree with the adoption of this position for non-coal underground mines. The nature of the hazards in an underground mine requires a person with a higher level of competence in identifying hazards, monitoring controls, understanding changes, etc. In underground coal mines, a similar position is required (deputy), as well as a higher level supervisor (undermanager).</li> </ul> <p><i>Is three years an appropriate transitional period for the commencement of the requirement for site senior executives and underground mine supervisors?</i></p> <ul style="list-style-type: none"> <li>· It would appear to be an appropriate amount of time. However, given that the requirements for these two (2) statutory positions will involve attempting to achieve consistency across NSW, Qld and WA (through the Tri-state Competency Advisory Council), I wonder if three years is sufficient?</li> </ul> <p><i>What are stakeholders' views on the proposed additional statutory functions in the list above?</i></p> <ul style="list-style-type: none"> <li>· No opinion on this issue.</li> </ul>
p. 35	<p><b>3.22 Savings and transitional arrangements</b></p> <p><b>Discussion point:</b></p> <p><i>What are stakeholders' views on the adequacy of the transitional arrangements for compliance with the various regulatory provisions in the draft WHS (Mines) Regulation in appendix B?</i></p> <ul style="list-style-type: none"> <li>· The transitional arrangements appear to be adequate, including the proposal to allow six months for mine operators to review their existing management systems and modify them to comply with the new safety management system requirements. This should be sufficient time for mine operators to undertake this work.</li> </ul>
p. 66	<p><b>7.1.2 Transitional arrangements relating to certificates of competence and to provide for practising certificates</b></p> <ul style="list-style-type: none"> <li>· The proposed transitional arrangements in relation to statutory positions appear to be reasonable and achievable.</li> </ul>

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#### 4 Mining codes of practice

**Discussion points:**

*What are stakeholders' views on the development of the tri-state mining codes of practice listed above?*

- I believe that a priority should be the development of a *Contractor management* code of practice
- Is it proposed to have a tri-state *Risk management* code of practice? If not, what will be the status of MDG 1010 and MDG 1014?

*What are stakeholders' views on not adopting the **Survey and drafting for mine survey plans** code of practice in NSW, in light of the requirement for mining surveyors to have to comply with the **Survey and Drafting Directions for Mine Surveyors** issued by the Surveyor General? No opinion on this issue.*

## Part 2 - Comments in relation to draft regulation

Clause number	Title of clause and your comment or suggestion
Cl 9 Cl 29 Cl 33 Cl 38 Cl 49 Cl 58 Cl 66 Cl 68 Cl 82 Cl 85 Cl 101 Cl 152	<p>The term 'competent person' is used in a number of places in the draft Regulation, including:</p> <ul style="list-style-type: none"> <li>· cl 9 (2)</li> <li>· cl 29 (2) (d)</li> <li>· cl 33 (2) (b) (i)</li> <li>· cl. 38 (2) (c) &amp; (d)</li> <li>· cl 49 (2) (c)</li> <li>· cl 58 (3)</li> <li>· cl 66 (3) (a)</li> <li>· cl 68 (2) (c)</li> <li>· cl 82 (3)</li> <li>· cl 85 (2) (a)</li> <li>· cl 85 (7) (b)</li> <li>· cl 101 (b)</li> <li>· cl 152 (a)</li> </ul> <p>In all the above clauses the competency requirements for a 'competent person' are not defined. Are the competency requirements for a 'competent person' to be defined, or will this be left to the mine operator or PCBU (in the case of a contractor) to determine the requirements?</p>

<p>Part 8 Cl. 133 to 149 inclusive &amp; Schedule 10</p>	<p><b>Statutory position scheme components – Part 8 Statutory functions &amp; Schedule 10 Statutory functions</b></p> <p>My overall comment is that the ‘statutory position scheme’ components as outlined in the draft WHS (Mines) Regulation 2014:</p> <ol style="list-style-type: none"> <li>1. are logical and easy to understand</li> <li>2. are contained in separate discreet components of the draft Regulation – Part 8 and Schedule10 – therefore the requirements can be readily accessed without the need to peruse the entire Regulation</li> <li>3. use the language that the industry already uses – e.g. ‘Statutory positions’; ‘Statutory functions’.</li> </ol> <p>Schedule10 in particular is very useful. The logic is very good - a person appointed to a ‘Statutory position’ performing a ‘Statutory function’, and the specific requirements for appointment which the mine operator must meet. All very clearly outlined.</p>
<p>Part 8 Cl. 133, 134, 135</p>	<p><b>Part 8 Statutory functions, Cl. 133 Definition; Cl. 134 Statutory positions and statutory functions; Cl. 135 Obligations on mine operator</b></p> <p>The defining of ‘key statutory functions’ (cl. 133) is good. Also useful is the specifying that only one individual can hold a ‘key statutory functions’ at a mine (cl 135), but that a person can hold more than one statutory position (including at a different mine) (cl 134).</p>
<p>Part 8 Division 2</p>	<p><b>Part 8 Statutory functions, Division 2 Appointment to statutory positions</b></p> <p>The need to appoint persons to ‘Statutory positions’ appears to be new. It is a logical requirement, and in my recent experience is a process that most coal operations follow. But it will probably require some specific explanation in the briefing sessions when the Regulation is enacted (I assume that briefing sessions will occur?). The requirement to have documentary and verified evidence that a person has the ‘requirement for appointment’ (as per Schedule 10), and to retain this evidence within an individual’s personnel or training file, may need to emphasised.</p>
<p>Part 8 Cl. 135 (2)</p>	<p><b>Cl. 135 Obligations on mine operator, sub-clause (2)</b></p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><b><i>135 Obligations on mine operator</i></b>  <i>(1) ...</i>  <i>(2) The mine operator of a mine must ensure that any individual appointed to a statutory position at the mine is capable of exercising all the statutory functions required to be exercised in the statutory position.</i></p> </div> <p>This is a very wide requirement, and would appear to place an obligation on the mine operator beyond the acceptance of a practising certificate or other ‘requirement for appointment’ (as per Schedule 10) as evidence that a person is capable of exercising ‘... <i>all the statutory functions required to be exercised in the statutory position</i> ...’. Is this the intent? In order to ‘... <i>ensure that any individual appointed to a statutory position at the mine is capable of exercising all the statutory functions</i>’ the current wording would place an obligation on the mine operator to:</p> <ol style="list-style-type: none"> <li>a. Train and assess an individual in all the elements of the SMS <u>before</u> they are appointed to a statutory position, and</li> <li>b. Train and assess an individual in the specific statutory functions to be exercised <u>before</u> they are appointed to a statutory</li> </ol>

	<p>position, and</p> <ul style="list-style-type: none"> <li>c. Train and assess an individual in all roles / responsibilities contained in all components of the SMS <u>before</u> they are appointed to a statutory position, and</li> <li>d. Refresher train and/or re-assess in a. to c. above <u>at regular intervals</u> in order to maintain competence in the mine's SMS and associated systems/processes/plans/procedures etc.</li> </ul>
Part 8 Cl. 141	<p><b>Cl. 141 Conditions</b></p> <p>This clause appears to provide sufficient scope for the regulator (on the advice of the Mining Competence Board) to require the holder of a practising certificate to provide evidence of maintenance of competence activities before a practising certificate is renewed. Also see '<i>Additional Comments</i>' section below.</p>
Part 9 Cl. 155	<p><b>Cl. 155 Conditions</b></p> <p>Sub-clause (5) contains a reference to a 'cable repair signatory certificate of competence'. Sub-clause (6) clarifies that this is a 'statutory function'. This statutory function is not outlined in Schedule 10 – this is logical as Schedule 10 only deals with the statutory positions at mines, and this is a function that would be exercised at a cable repair workshop. This raises a number of questions:</p> <ul style="list-style-type: none"> <li>· How is this statutory function to be implemented?</li> <li>· Will the Mining Competence Board determine the requirements and issue a 'certificate of competence' to individuals based on some criteria (e.g. qualifications, training and / or experience in certification of cable repair)?</li> <li>· As it is a 'certificate of competence', will there be a requirement to have a 'practising certificate'?</li> </ul>
Schedule 10 Part 6 Cl. 12	<p><b>Schedule 10 Statutory functions, Part 6 Exploration sites and tourist mines, Clause 12 Site senior executive</b></p> <p>One component appears to be missing from the public consultation draft Regulation:</p> <ul style="list-style-type: none"> <li>· the clause does not define the 'requirement for appointment'</li> <li>· all other statutory positions have the 'requirement for appointment' defined – either as 'a current practising certificate', or specific wording outlining the 'requirement for appointment'.</li> </ul> <p><u>Suggestion</u> – this omission be rectified in the next draft of the Regulation.</p>

### Part 3 – Additional Comments (not directly related to Part 1 or 2 above)

Part 8  
Cl. 141

#### Cl. 141 Conditions

Regarding the requirement for the holder of a practising certificate to provide evidence of maintenance of competence activities before a practising certificate is renewed:

- a. I assume the requirements will build on some of the work already done on the issue of maintenance of competence by the CCB, the MMEICB and MICU?
- b. I believe that the regulator (on the advice of the MCB) should use the wide scope provided by subclause (2) (a) to require evidence of maintenance of competency from both the following two sources:
  - i. maintenance of competence in the mine's SMS (e.g. refresher training / reassessment in the mine's PMHMPs and PCPs and other elements of the SMS), and
  - ii. maintenance of competence in 'cross-industry' knowledge through CPD schemes, maintenance of competence courses, etc.

This may be an issue that can evolve over time – i.e. initial requirements to renew the practising certificate (e.g. CPD schemes, maintenance of competence courses), then 3 years later additional requirements based around demonstration of maintenance of competence in the mine's SMS elements.

- c. Subclause (2) (b) - will the '*knowledge of law and ethics*' apply to certain statutory positions (e.g. SSE), or to all statutory positions?