

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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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
2.3 page 14	Opal miners work underground on 50m x 50m titles, generally in one or two man small partnerships. It is a concern that one regulation with clearly defined provisions will still overlook small mines. There is a great risk and it appears that small miners will be subject to the same provisions as coal and metalliferous mines which they will be unable to comply with. Documentation and notification plays such a large role in the WHS legislation and we can understand this may improve WHS in a

	<p>large coal and metalliferous mine it makes little if any difference in an opal mine. Opal miners have an excellent safety record all without completion of excessive documentation and notification forms. The regulator has prepared numerous templates for opal miners to assist with documentation compliance and raise WHS awareness, for which we are very appreciative. We must however question the rationale of devoting so many resources to documentation and notification compliance when legislation could ease this burden and allow resources to be better used on the ground. The easiest way to ease the burden on both the miner and the regulator would be to only apply the majority of documentation and notification requirements to mines with more than five persons working in that mine.</p> <p>The majority of the tri-state provisions are superfluous as they have been covered elsewhere throughout the legislation but appear just to add a bit more in an overly prescriptive way and an opal miner would be unable to comply with these provisions. Nor would the regulator have the resources to enforce these provisions equitably.</p> <p>The tri-state provisions would be better suited to a code of practice for coal and metalliferous mines and/or prefaced with a similar clause to that contained in 121(1) "This clause does not apply to a mine (other than a coal mine) if less than 20 persons work at the mine."</p> <p>A less attractive option would be to preface the tri-state provisions with the terms 'so far as is reasonably practicable' and/or 'taking into account the nature, size and the complexity of the mining activities'.</p>
2.4 page 15	Processing of potential opal bearing claystone or mullock dumps should not be captured by the requirements for 'emplacements areas' and 'reject'.
3.3 page 16	From an opal miners point of view the provisions do not provide any flexibility in regards to the detail required in the SMS. This regulation has been designed for coal and metalliferous mines and opal miners will be unable to or have great difficulty in complying with many requirements. Many requirements are not applicable to small opal mines of one and two persons and these are commented on in our response to the draft regulation.
3.4 page 17	We do not believe principal mining hazards are present in opal mines. However if the regulator interprets the requirement on a regional scale rather than a mine scale there may be a requirement to include ground or strata instability as a PMH even though a there is no chance of multiple deaths and the last death by a cave in was over 15 years ago. Opal miners would not have the resources to comply with a PMHMP. We believe the hazards and controls would be adequately covered by their SMS.
3.5 page 17	The matters to be addressed in each of the principal control plans are onerous and in many cases not applicable to opal mines. In particular the electrical engineering plan as opal miners' electrical equipment is plug and play and the health control plan should not apply as there are mainly one or two persons mining and they are generally partners.

3.6 page 18	The contractor management clauses are far too prescriptive for opal mines whose contractors perform low risk activities such as removing mullock, backfilling small shafts and drilling 9” and 3’ shafts to depths no greater than 35 metres.
3.7 page 18	The vast majority of these specific control measures are not applicable to opal mines. We believe nearly every tri-state provision should be addressed in a code of practice rather than this regulation. Those codes of practice should not apply to opal mines.
3.7.2 page 19	The NCDI’s should definitely be included in the code of practice for coal and metalliferous mines and not the regulation as these sections are not applicable to opal mines.
3.8 page 20	All the tri-state provisions should be contained in a code of practice as the majority of these provisions appear to be aimed at coal and metalliferous mines and opal mines are caught in the net when the majority does not apply or are too prescriptive and thus not feasible to comply with.
3.8.2 page 21	The NCDI for winding systems are far too prescriptive for regulation and should be included in a code of practice.
3.11 page 25	Opal mines will never be able to comply with self-rescuer provisions.
3.11.1 Page	An opal miner would not have access to air bags although the local SES mines rescue unit may have. Similarly it is impractical for one and two man partnerships to have a vehicle equipped to transport injured persons however the contacting of the appropriate ambulance service is a reasonable part of emergency management.
3.11.3 Page 26-27	Proposed additional regulations should only be applicable to mines with more than 20 workers.
3.12 page 27	This requirement should only be for mines where there is more than five workers. There would be no point to display this information to the one or two opal miners who prepared the information in the first instance.
3.13 page 28	Opal mines should not be subject to these provisions. Opal miners develop new mine entries, which are a three foot diameter vertical shaft to a depth generally no deeper than 35 metres on a regular basis and generally very shortly after registering a mineral claim. It would be unreasonable to notify the regulator of their intent and unreasonable to wait three months and would serve no purpose. As discussed previously we do not believe emplacement areas should apply to opal mines.
3.14 page 30	Health assessment provisions should not be included in the WHS (Mines) regulation. In regards to drug and alcohol testing the discretion of whether or not it should be undertaken should remain with the mine operator and not with the regulator as these clauses would not be applicable to opal miners and nor could they afford to comply.

3.21.2 Page 35	For an opal mine in the majority of cases the Site Senior Executive, Mine Operator and PCBU will be one and the same person. There should be no requirement for a Site Senior Executive for an opal mine, it serves no purpose.
4 page 38	The majority of the tri-state provisions should be in codes of practice that are only applicable to coal and metalliferous mines as opal mines could not comply with these provisions. Otherwise the regulations are so prescriptive it does not appear that there would be anything left to put in a code of practice.
Part 2 - Comments in relation to draft regulation	
Clause number	Title of clause and your comment or suggestion
3	Definitions. Emplacement area – this should not include claystone, sandstone etc. that has been processed or dumped as a part of opal mining.
9 (5) & (6)	<p>Management of risks to health and safety. Opal miners undertake risk assessments on a continual basis. We question the purpose of keeping records of the risk assessments and control measures. It is certainly not for the benefit of the miner and his partner (if any) and their work, health and safety. However the safest, most competent opal miner can be subject to substantial penalties if he fails to fill in a piece of paper. Most opal miners work with one partner or alone.</p> <p>Similarly a contractor, for example drilling shafts, may visit a number of mineral claims in one day.</p> <p>For an inspector to penalise a miner or contractor for not keeping records they must first visit their mine site to inspect their records. Why couldn't the inspector simply quiz the miner orally on what risk assessments he has undertaken and what control measures he has in place. This would be much more effective in improving work health and safety rather than ensuring opal miners have completed a form.</p>
13 (2)	Duty to establish and implement safety management system. The phrase 'so far is reasonably practicable' is a positive one for the opal industry and should be used more widely.
13 (3)	In the majority of cases an opal mine is commenced in virgin ground. To establish and implement a SMS prior to mining operations taking place will be difficult as it will be impossible to prepare a ventilation plan or a survey of a mine that has not commenced. Opal is a resource that cannot be predicted and many miners follow geological features or traces of opal underground and do not have a plan of where they will tunnel. They are in fact exploring underground until they discover an

13 (7)(a)	<p>economic resource.</p> <p>The phrase ‘having regard to the nature, complexity and location of the mining operations’ is positive for opal mines and should be used more widely throughout the regulations.</p>
14 (1)(e)	<p>Content of safety management system. An opal mine does not have an organisational structure as there generally only one or two persons who are usually partners in a mine. To be required to prepare an organisation structure would be a waste of time and resources for all stakeholders.</p>
14 (1)(g)	<p>The requirement for a contractor’s health and management plan to be included and how it will be integrated into the mines SMS, is onerous for an opal miner and would not enhance WHS. An opal miner may have a contractor visit his mine one to three times during the life of the mine generally to drill three foot shafts and perhaps a loader to assist with rehabilitation.</p>
14 (1)(p)&(q)	<p>The requirement to review control measures following an incident is covered by clause 10(1)(d) – this clause appears to be unnecessary splitting of hairs.</p>
14 (1)(s)	<p>Opal mines do not have shifts so they would be unable to comply with this clause.</p>
22 – 23 Schedule 1	<p>Identification of principal mining hazards and conduct of risk. We do not believe opal mines should be captured by this clause and the definition of PMH under clause (5) should ensure this on a mine scale. However if clause 5 was interpreted at a regional scale rather than mine by mine, ground or strata failure could be considered as a PMH. An opal miners SMS would be sufficient for ground or strata failure having regard to the nature, complexity and location of the mining operations.</p> <p>Opal miners could not comply with the complexity of the information required for a PMHMP.</p>
16	<p>Changes to safety management system. An opal miners SMS may change daily with the construction of new drives, new ventilation holes and even moving to a new mine. The requirement to notify any change to the SMS would place an onerous burden on opal miners and the regulator who would need to monitor over 3,500 mines in the Lightning Ridge area.</p> <p>We believe the requirement under clause 17 to maintain the SMS so it remains effective, is sufficient.</p>
25 – 26 Schedule 2	<p>Other plans. We do not believe these other plans are applicable to or necessary for opal mines. They are onerous and opal miners would be unable to comply. Any hazards identified in regards to health, mechanical, electrical, explosives and contractors would have already been dealt with through control measures as part of the SMS and in other sections of the regulations. These sections should only be applicable to mines with more than five workers.</p>

33	<p>Electrical safety. An opal mine relies on a mobile generator to supply power and all equipment is plug and play. An opal miner would not be able to comply with most of this section.</p>
34 Schedule 3 (6)	<p>Notification of high risk activities. It is totally impractical for opal miners and the regulator to notify the regulator each time an access shaft is to be drilled and then to wait three months before drilling the shaft. We do not agree that drilling a 100cm shaft for opal mining is a high risk activity. To resolve this perhaps a depth restriction could be used and Schedule 3 clause 6(1) could be amended to say "... (including by sinking a shaft deeper than 50 metres ...).</p> <p>34 (6) says the regulator may waive or reduce the waiting period however the notification is compulsory and should also be able to be waived by the regulator.</p>
36 (3)(b)	<p>Closure, suspension or abandonment of mine. The opal industry could not comply with this clause. There are many shafts that have been provided with a barrier, particularly in the preserved areas, however the previous mine owner may have moved away or died decades ago and thus will not properly maintain the barrier nor ensure the backfilled shaft has not subsided.</p>
38	<p>Inspection plan. This clause is superfluous. It is already covered in the SMS and various control measures.</p>
40 (1)(a)	<p>Ensuring exposure standards for dust not exceeded. An opal miner could not comply with this clause to measure dust. This clause should be prefaced with "having regard to the complexity, size and type of the mining operation".</p>
49	<p>Ropes. An opal miner would not be able to have his rope approved in opal mining areas. Propose a depth is included and this clause only applies to winding systems for depths greater than 50 metres.</p>
52	<p>Communication systems. This clause needs to include the words "where reasonably practicable" as opal mines are small and there is rarely if ever anyone on the surface at the mine with whom to communicate nor anyone underground with whom to communicate. Where there is more than one person working underground they are generally in the same area of the mine and communicate by talking to each other.</p>
53 (c)	<p>Ground and strata support. This clause should not be applicable to opal mines as there are no workers to read proposed support arrangements.</p>
Subdivision 2	<p>All underground mines – air quality and ventilation. The vast majority of the tri-state provisions are already covered by the ventilation control plan and other clauses, are extremely prescriptive and would be better suited to a code of practice. Opal miners would not be able to comply with the majority of these clauses.</p>

62	Modelling to take place before changes to a ventilation system. An opal miner could not comply with this clause. The ventilation system changes every time they sink a 9" ventilation hole or move a blower, which they do on a regular basis when mining.
63	Duty to prepare ventilation control plan. Clauses 63 (h) – (p) are superfluous, repetitive and already covered generally by the plan. These prescriptive clauses are perhaps better suited to a code of practice.
65 (3)	Ventilation plan. It is totally unnecessary for an opal miner to review a ventilation plan once per month. It is sufficient to review and revise a plan when it is necessary to do so. Clause 64 already covers the review process.
87	Duty to prepare emergency plan. The tri-state provisions are not applicable to opal mines and opal miners would be unable to comply. A record of all persons underground when there is only one or two people is pointless as in an emergency they would be unable to give a list to each other or to emergency services. Opal mines are only 50m x 50m and it would be impractical for miners to have arrangements in place to seal all or part of an underground mine.
95	Emergency exits. (2)(c) It is unnecessary for emergency exits in an opal mine to be marked or signposted as they would be the only shafts with ladders to the surface and easily identifiable above and underground. 4(c) & (d) there are no roadways underground in an opal mine. Exits are 3' shafts which obviously a not suitable for use by a vehicle. (6) These clauses are obviously designed for coal and metalliferous mines and should not be applicable to opal mines.
96	Safe escape and refuge. (2)-(7) Opal miners would be unable to comply with these clauses. Opal mines are 50m x 50m, there are no refuge chambers. Communication has been addressed in clause 52 and these clauses are repetitive. Escape routes are easily identifiable underground as these will be the areas currently being worked and will therefore be the only drives with lighting.
99	Self-rescuers. There is no risk of irrespirable atmosphere in an opal mine with a suitable ventilation plan and this clause should not apply.
100	Personal protective equipment in emergencies. In emergencies in an opal mine it is most likely that the mine operator is the worker and the emergency services are the most likely people to enter a mine in an emergency and they have their own equipment.
101	Competent person at surface. Opal miners cannot comply with this requirement as they tend to work alone or with one other partner and they would both be underground at the same time. This clause should only apply to mines with more than five workers. To enforce compliance with this clause would effectively shut down the opal industry.

104	Duty to provide induction for workers. This clause is superfluous and has been covered by clauses 102 & 103.
122	Plans of mines with less than 20 workers. It will be extremely difficult for an opal miner to show proposed workings of a mine. Opal cannot be assayed and miners often do not have a plan. They may dig exploratory drives and/or follow opal trace or geological features and the mine workings could change daily. In an emergency it is very obvious on top of the ground and underground where opal miners are located in the mine. The shaft will have access ladders and the lighting and mining equipment will be located where the miner is working.
126	Survey plan to be provided to regulator. This clause is totally impractical for the regulator to keep thousands of plans once a mineral claim is cancelled and serves no purpose.
128	Duty to notify regulator or other matters. This clause is totally impractical for opal miners and regulators. Opal miners regularly stop and start mining for a variety of reasons - repair equipment, devote time to exploration, move from one mining title to another and go back at a later date. There are numerous part time miners who may mine for 3-6 months of the year and hobby opal miners who may mine intermittently. There are over 3,500 mineral claims and it serves no benefit for the regulator to be aware of when opal miners stop and start work. The notice is over prescriptive for a 50m x 50m title. 128 (5) should be amended to read "The regulator may waive or vary any requirement for the giving of notice by the mine operator under this clause".
129	Quarterly reports. This clause is totally impractical for opal miners and the regulator and should not apply to mines with less than five workers.
Part 12	Safety and health representatives. The title of this section should be amended to 'Safety and health representatives for Coal Mines' to make it clear and align with Part 5 of the WHS (Mines) Act 2013.
Schedule 3	Emplacement areas. Emplacement areas are definitely not a high risk activity for opal mining and opal mines should be excluded from this section. Most processing sites are cooperatively used by 20-30 mining teams. It involves the adding of water to the potentially opal bearing claystone contained in a converted cement mixer called an agitator. The dissolved claystone washes out of the windows in the agitator leaving behind the 'tailings' pieces of claystone/sandstone that have not dissolved and hopefully opal. The silt which we believe should not be classed as 'reject' is contained within bund walls. The establishment, operation and decommissioning of these processing sites are subject to strong environmental regulations, many of which overlap with this section. Opal miners would not be able to comply with the requirements for engineering drawings, geotechnical designs and the



	<p>costs for a registered surveyor to travel the 300-400km is prohibitive.</p> <p>Development of a new mine entry. We have commented previously with clause 34 but can only reiterate that the sinking of 3' shafts for opal mining is a common occurrence and not one we consider as high risk.</p>
Schedule 6	<p>Sampling and analysis of airborne dust. Coal mines should be included in this heading to make it clear the schedule only applies to coal mines.</p>