

DEPARTMENT OF MINERAL RESOURCES

NATIONAL COMPETITION
POLICY REVIEW

MINES INSPECTION ACT 1901

MINES INSPECTION GENERAL
RULE 2000

ISSUES PAPER

JUNE 2001

CONTENTS

	PAGE
<u>1. INTRODUCTION</u>	
1.1 Background To National Competition Policy	1
1.2 The Process Of The Review	2
1.3 Legislation In The Context Of The Government's Social Policy	3
1.4 The Prevailing Policy And Legislative Framework	6
<u>2. THE MINING INDUSTRY</u>	
2.1 Minerals Production In NSW	9
2.2 The State of The Industry	11
<u>3. THE LEGISLATION</u>	
3.1 Summary Of The Act	13
3.2 Summary Of The General Rule	15
<u>4. ANALYSIS OF THE MINES INSPECTION ACT AND ISSUES ARISING</u>	
4.1 Review of the Act	17
4.2 Summary Of Findings And Options Identified	35
<u>5. ANALYSIS OF THE GENERAL RULE AND ISSUES ARISING</u>	
5.1 Review of the General Rule	40
APPENDIX A	
Terms Of Reference	46

1. INTRODUCTION

1.1 BACKGROUND TO NATIONAL COMPETITION POLICY

In April 1995, the Council of Australian Governments (COAG) ratified the National Competition Policy through a series of inter-governmental agreements and initiatives. COAG, established in 1992, comprises the Prime Minister, Premiers, Chief Ministers and the president of the Australian Local Government Association. COAG meets to discuss policy issues of national significance, with the aim of promoting co-operation among governments on reform of the national economy.

The release of the policy package followed meetings of COAG in 1994 and 1995 held to consider the means by which competitiveness within Australia's business environment might be enhanced in order to achieve growth and confidence in the national economy.

The National Competition Policy "is aimed at increasing consumer and business choice, reducing production and transportation costs in an effort to lower prices for goods and services, and creating an overall business environment in which to improve Australia's international competitiveness."

One of the key components of the package is the Competition Principles Agreement, which provides guidelines for implementation of the policy. The agreement is intended to encourage competition in the business activities of governments and other sectors of the economy through legislative review, prices oversight of government business enterprises, application of competitive neutrality and structural reform of public monopolies.

The Competition Principles Agreement requires State governments to review and reform legislation that may restrict competition, and to remove restrictions on competition in line with the guiding principles for legislation review set out in clause 5 (1) of the Agreement. Under the terms of the agreement, legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs, and
- the objectives of the legislation can only be achieved by restricting competition.

The NSW government is presently reviewing legislation to determine whether it contains unnecessary, cumbersome or costly impediments to conducting business in a competitive market. The review is considering

ways of achieving more effective regulation where there are clear benefits in government intervention in the market, including amending the legislation or by providing alternative means for achieving an outcome.

1.2 THE PROCESS OF THE REVIEW

The NCP Review is being carried out as part of a broader review of the Act and General Rule. A Discussion Paper has been developed as part of that review and this Issues Paper is being released in conjunction with that Paper.

In accordance with the requirements of the Competition Principles Agreement, a committee of officers of the Department of Mineral Resources, in consultation with The Cabinet Office, is reviewing the Mines Inspection Act 1901 (the Act) and the Mines Inspection General Rule 2000 (the General Rule) to identify and assess restrictions on competition.

The Terms of Reference for the review, approved by The Cabinet Office and the then Minister for Mineral Resources, are at Appendix A.

This discussion paper raises preliminary issues and suggests amendments to the legislation and other alternative approaches. These proposals will now be subject to consultation with all interested parties, and submissions in response to this paper are invited.

Submissions marked confidential will be treated in confidence, however all submissions are subject to release under the provisions of the Freedom of Information Act 1989.

The industry consultative framework is set out in the Terms of Reference. (Appendix A). This entails the Mine Safety Council with its supporting advisory groups reviewing matters relevant to industry stakeholders.

Following consultation with interested parties the committee will report to the Minister, who will then inform the Premier, prior to consideration by Cabinet. The report to the Minister will cover both the analysis and consultation phases of the review, advise as to the outcomes of the consultative process and provide recommendations in relation to the Act. The report will contain a list of the names of all parties involved in the consultation process including parties from whom submissions were received.

The closing date for submissions is 9 November 2001. Submissions should be forwarded to: Mr Rod Morrison, Department of Mineral Resources, PO Box 536 St Leonards NSW 1590, fax: 9901 8584, e-mail: morrisr@minerals.nsw.gov.au

It is emphasised that the options presented in this paper do not necessarily reflect the views of the Department, the Minister or the Government. The issues and options are put forward solely for the purpose of stimulating discussion and debate.

1.3 MINE SAFETY LEGISLATION IN THE CONTEXT OF GOVERNMENT SOCIAL POLICY.

The ongoing development of the Mines Inspection Act 1901 and the Mines Inspection General Rule 1994 must be viewed in context of the broader social policies of the Government, i.e. environmental, occupational health and safety, industrial relations, access and equity policies. This Review, being part of the process of policy development, should not be seen as being conducted in isolation. Rather this review of the legislation in terms of National Competition Policy must be viewed in the context of the Government's overall development of social justice policy.

In December 1997, the Cabinet Office released *Guidelines for Assessing Social Impacts* to assist Government agencies in implementing the Government's Social Justice Policy. These *Guidelines for Assessing Social Impacts* serve two obvious purposes in the safety and health area. The first is supporting the use of performance measures to measure impact of policy on safety performance. This will become particularly important as major legislative change is undertaken. The second is to provide a model to examine the likely impact of changes in strategic direction of policies and procedures for the future.

With the aid of these guidelines and the expertise of the Department in this area, mine safety and health legislation administered by the Department, as well as the associated policy framework, is developed with an appropriate social policy focus.

While the legislative and policy program of the Department largely impacts directly on the exploration and mining community, the Department also operates within a larger framework of government natural resources policy, the development of which is led either solely or consultatively by other agencies with whom lies prime responsibility for community consultation and social impact assessment. However, among the number of areas in which the Department's policy and operational processes potentially hold significant social impacts, mine safety is of paramount importance.

Underpinning the Department's mine safety policy objectives is the expectation under the Government's Social Justice Policy for a safe and healthy work environment. This has been commonly expressed as a worker's right to return home from work in a condition no worse than when they went. Therefore, on social justice grounds the Government is

committed to ensuring that community expectations are met regarding workplace safety.

The implementation of the Government's policy priorities needs to be achieved with the inclusion of all relevant parts of the mining community in promoting safety and health. In practice this has involved setting up formal consultative processes on a tripartite basis.

History

Historically, a tripartite committee was established for the metalliferous and quarrying industries following the introduction of the Occupational Health and Safety Act in 1983. This committee which was called the Mining OTCOS (other than coal and shale) Committee was established under a State body, the Occupational Health and Safety Council. The Mines Inspectorates at the time were part of the Department of Industrial Relations.

With the disbandment of the Council and the return of the Inspectorate to the Department of Mineral Resources, the OTCOS committee continued under the chairmanship of the Chief Inspector of Mines to give advice to the Minister for Mineral Resources on health and safety issues relating to the non-coal industries. The tripartite process was very successful in recommending legislative change within the industry and with its main achievement being the introduction of the General Rule in 1994.

It should also be noted that the 1980's was characterised by significant change and restructuring within the metalliferous industry with large reductions in employees corresponding with improvements in technology and mining methods. The OTCOS committee oversaw the safety policy development resulting from these changes.

In 1996 the OTCOS committee was split into two separate committees, Metalliferous and Extractive Industries, to give a better representation from both industries. The split also corresponded in the National Mining ITAB development of separate national training packages for metalliferous and extractive industries.

More recently, the Mine Safety Council has been formed to advise the Minister on strategic direction, legislation and regulation standards, broad industry policy and performance measures. With the formation of the Mine Safety Council, both industry advisory bodies now sit under this Council and still overview all legislative change.

Current Directions

Contemporary government policy development is conducted with increasingly limited resources, therefore policy development must focus on areas of greatest need in safety and health. It has been determined that importance must be placed on establishing an industry data base on safety performance with the intention to move to a National Standard.

This will allow comparative analysis to be undertaken which will enable the identification of best practice. Resources will then be allocated on a basis of maximising the impact on safety performance. In addition the performance measure will be an ongoing parameter for assessing the impact on the number of fatalities, serious injuries, lost time injury and near misses.

Successful legislative and policy processes must also be focussed on outcomes. In the area of mine safety and health the Government's social policy outcomes must be focussed on contributing to a better physical working environment. Further, by ensuring equitable access to mine safety promotional opportunities, by formalising enforcement approaches to mine safety, and making these statements publicly available, the system is recognised as being transparent. This should ensure acceptance by all stakeholders of the legislative regime, policies and practices put in place.

Through seeking wider public participation in safety and health policy development, the community will take greater ownership of safety and health in mines.

International Conventions

Another important means of implementing social policy is through the ratification of international conventions. Australia (with the formal agreement of the States and Territories) has completed the ratification of several International Labour Organisation conventions relating to workplace health and safety. Once ratified, the terms of a convention are binding on member states. The NSW Government's Industrial Relations policy is for NSW to be compliant with the requirements of all relevant ILO conventions and to work towards ratification at a national level.

The Convention on Labour Inspection (1947, ratified 1975) requires the maintenance of a system of labour inspection in industrial workplaces, to ensure the enforcement of legal provisions relating to conditions of work and the protection of workers. The Mines Inspection Act 1901 implements labour inspection in the mining industry as set out in the convention.

Other relevant conventions which have been classified as suitable for ratification, or whose terms have been included in "model regulations", are:

- Safety and Health in Mines (1995), which recognises that “it is desirable to prevent any fatalities, injuries or ill health affecting workers or members of the public, or damage to the environment arising from mining operations” and provides that application of the Convention shall be through national laws and regulations supplemented by, where appropriate, technical standards, guidelines or codes of practice;
- Chemicals (1990), requiring the formulation, implementation and periodical review of policy on safety in the use of chemicals at work;
- Occupational Safety and Health (1981), requiring a national policy on health and safety in the workplace;
- Working Environment (Air Pollution, Noise and Vibration, 1977), requiring measures to prevent or control hazards in the working environment due to air pollution, noise or vibration; and
- Guarding of Machinery (1963), providing that employers shall ensure that machinery is guarded so as to comply with regulations and standards of occupational safety and hygiene, and shall bring such regulations to the notice of workers.

1.4 THE PREVAILING POLICY AND LEGISLATIVE FRAMEWORK

The main legislative instruments affecting safety and health in the NSW minerals industry are the Occupational Health and Safety Act 1983 (OH&S Act) and the Mines Inspection Act 1901 (MIA). Other legislation that impacts on non-coal mines are the Mines Rescue Act 1994, which primarily makes provision for an emergency service for the industry, and the Dangerous Goods Act 1975, whose principal impact on mining sites is in relation to the storage and use of explosives and flammable liquids.

The OH&S Act is considered umbrella health and safety legislation. The OH&S Act applies to all industries and workplaces in NSW (including mines). In addition to the OH&S Act there is industry specific safety legislation covering such sectors as factories, shops and industries, construction safety and mining.

Separate mining industry legislation has been considered necessary due to the history of the industry, a distinct culture in the industry, the nature of the work performed, the specialised skills needed for effective regulatory oversight and the efficiencies gained by having all government functions related to mining in a single agency. This legislation, including the MIA is considered to be ‘associated’ legislation to the OH&S Act. This means that the provisions of the OH&S Act must be observed as well as those contained in the MIA and where a conflict arises between the two Acts the OH&S Act will prevail.

The OH&S Act creates a number of 'duties of care' for various groups: employers; manufacturers/suppliers; and employees. These duties mirror, in statute law, those duties which for some considerable time have been found in common law.

In the case of employers the general duty is found at section 15 of the OH&S Act, where it is stated, "Every employer shall ensure the health, safety and welfare at work of all his employees." Associated duties include requirements to maintain plant and systems of work; provisions for the safety of plant and substances; to provide adequate facilities for welfare; and, to provide adequate information about plant and substances: so that safety is assured and risks to health are eliminated.

Section 18 of the OH&S Act imposes duties on manufacturers/suppliers of plant and substances for use at work. These duties include: ensuring plant and substances are safe and without risks to health; carrying out research, examination, testing and risk elimination or minimisation; and the making available of appropriate information. In the case of employees (section 19) the duty is restricted to the taking of reasonable care for the health and safety of persons, and, to co-operating with requirements imposed in the interests of health and safety.

The policy environment that surrounds the Mines Inspection Act and the General Rule is designed to support the industry's duty of care. It is the role of the Department of Mineral Resources to produce a policy environment that allows for an effective regulatory framework.

The Department of Mineral Resources is the predominant Government agency dealing with the mining industry. The Department is an integrated strategic point for the government in its dealings with the mining industry and the public on mining matters, and vice-versa.

The Department provides a one-stop-shop for information on mining titles, expertise on mine safety and environment management, advice on mining development and resource recovery, management of geological information and exploration. With these functions integrated in one Department, the Government is able to effectively deal with all aspects of the mining industry so as to ensure a consistent and well-conceived policy approach.

Legislation that gives effect to contemporary policy generally includes the following elements:

- General Duty of Care - This concept is one of the basic principles of common law, in which a manager has full responsibility or duty of care for the health and well being of all employees on that site.

- Increased Performance Based or outcomes-style Regulation - Under this system the Regulations describe the desired outcome and, within broad outlines or guidelines, require industry to achieve the desired outcome.
- Increased Accountability - Coincident with the increase in performance based regulation is increased responsibility of all in industry for safety. It also places an increased responsibility on the Department, who must ensure that improved processes do not cause any regression in safety performance.

Legislative systems would also tend to ensure effective risk management and the control of major hazards. Such systems require employers to develop, implement and maintain systems to control the design, construction and operation of mines.

The development of a systems approach must also be supported by a change in culture in the industry which moves from risk taking to risk aversion. Risks have to be assessed and safety outcomes agreed. Employers have full control and responsibility for the methods to be used to reach their safety targets. This could include hazard identification, risk analysis and the conducting of full scale safety assessments, complemented by performance monitoring and continuous improvement.

Investigations would continue to play an important role to ensure that the learning from accidents and incidents is maximised to ensure that they are not repeated and that the enforcement policy is applied in a fair, consistent and justifiable way.

The implementation of any new legislative model will be the result of extensive consultation. However, it is recognised that there are differing views on what constitutes legislative change and how far it goes. The method of consultation must enable all parties to have their say but must have the capacity to resolve difficulties. It is seen that the Mine Safety Council will have a key role in the development of a new Act. The two Safety Advisory Committees will also play an important part.

In preparing any new legislation regard will be had to the developments contained in both the new Queensland legislation and any new legislation for the coal sector.

This policy framework should assist in the broader understanding of this National Competition Policy Review as part of the overall development of the MIA and the General Rule and give an indication of the required elements of the legislation and the future directions that the legislation may take.

2. THE MINING INDUSTRY

The mining industry is one of the most important economic foundations on which the development and prosperity of NSW is built. The industry provides significant benefits for regional NSW in particular.

In 1999-00 more than \$560 million was spent on private new capital expenditure and mineral and petroleum exploration within the NSW minerals industry. The industry also generated \$6.2 billion of export income; 14,000 direct jobs and a further 16,000 in mineral processing activities. The industry also generates many times this number of jobs in various service and associated industries and it is considered that for every one job generated in the mining industry a further three are created in other sectors of the economy.

During 1999-00 investment and development of the minerals industry in NSW declined somewhat, primarily as a result of weak coal and gold prices. Mineral exploration expenditure fell by around 15 % between 1998-99 and 1999-00 and the overall value of mineral production declined by around 11 % in 1999-00 to reach \$5.9 billion. Of this total, coal represented some 70 % of the value of mineral production at \$4.1 billion.

Whilst the overall value of mineral production in NSW declined in 1999-00, one key commodity, copper, experienced a significant 54% increase in value of production from \$224 million in 1998-99 to \$345 million in 1999-00. Overall, the four key commodities in NSW - coal, zinc, gold and copper, combined account for about 88% of the total value of NSW mineral production.

2.1 NSW MINERAL PRODUCTION

There are 12 major metalliferous mines producing commodities such as gold, copper, silver, lead and zinc and a similar number of significant industrial minerals operations producing minerals such as clays, construction minerals and heavy mineral sands. There are also large numbers of smaller metallic, gemstone, industrial minerals and extractive materials operations. In 1999-00 the value of metallic mineral production was \$1.28 billion primarily from zinc, copper and gold production. Mineral sands, gems, other industrial minerals and construction materials production totalled \$566 million in 1999-00.

There exists excellent long term growth potential in the minerals industry due to demand for minerals and mineral products. The challenge is to ensure that the minerals industry can take advantage of these economic

opportunities in a competitive global market while ensuring that it operates in an environmentally responsible manner.

Despite the volatility in mineral commodity prices over the past three years, mineral production in NSW has increased significantly.

Expanding volumes of mineral production for key minerals in NSW, significantly higher coal prices and the low value of the Australian dollar are likely to result in the value of NSW mineral production rebounding strongly in 2000-01. Continued growth in the value of mineral production is expected to continue over the next couple of years as world economic growth recovers and mineral commodity prices firm. Longer term growth in production volumes and hence the value of mineral production in NSW will depend on the level of mineral exploration in the State.

The most significant percentage growth in the value of NSW mineral production in recent years has occurred in copper, which has increased by around 185 % since 1991-92 to reach \$345 million in 1999-00. NSW copper production is expected to continue to expand in 2000-01 and prices, after a strong showing in 2000 and a recent dip, are expected to recover by the end of 2001. The total value of production is forecast to increase 25 % to about \$433 million in 2000-01, assisted by the low value of the Australian dollar. Continued growth in world copper demand and prices, combined with increased output from NSW operations, should see a continued increase in the value of production over the period to 2002-03.

Gold production in NSW is forecast to exhibit the fastest rate of growth in coming years. The total value of NSW gold production between 1997-98 and 1999-00 increased by 64 %. The value of gold production is expected to increase a further 53 % to exceed \$448 million by 2001-02, driven by significantly higher production from both the Cadia mine and the nearby Ridgeway mine.

Despite the rapid growth of copper and gold production in NSW, coal will remain the most significant contributor in terms of value of production. Despite a decline in the value of total coal production in NSW in 1999-00, the forecast out to 2001-02 is for an increase of around 28 % from 1999-00 levels to reach approximately \$5.2 billion in 2001-02. The total value of mineral production in NSW is expected to reach \$7.4 billion in 2001-02, an increase of approximately 25 % over 1999-00 levels.

Underlying the strong growth in the value of mineral production since 1991-92 has been a combination of an increased level of mining activity in the State and generally higher commodity prices in Australian dollar terms. Mineral production (tonnage) has increased by 25% between 1991-92 and 1999-00 and the average Australian dollar exchange rate versus the US dollar has depreciated by 18% over the same time period. This has resulted

in a general increase in the Australian dollar price received of most mineral commodities produced in NSW. It is expected that the value of NSW mineral production over the next three years will continue to be driven largely by the same factors, with the US dollar value of most commodities increasing only marginally.

While the minerals sector in NSW is expected to experience moderate growth as a whole over the next three years, growth prospects amongst commodities differ. In contrast to increases in coal, copper and gold production over coming years, it is forecast that production of base metals, excluding copper, will continue to decline as they have in recent years. Silver, lead and zinc production in NSW has fallen 45 %, 28 % and 16 % respectively from 1991-92 to 1999-00. Declining production of these commodities is expected to continue due to dwindling reserves and deeper mining at the Broken Hill operations. Pasminco Limited has announced its intention to close its Broken Hill operations in 2006.

2.2 THE STATE OF THE INDUSTRY

A combination of falling coal prices and exports has had a dampening effect on the value of NSW mineral and metal exports in 1999-00. Mineral and metal exports in 1999-00 declined 4.6% over 1998-99.

Total mineral and metal exports in 1999-00 accounted for 33 % or \$6.2 billion of the State's \$18.9 billion total merchandise exports.

Exports of value added mineral products such as aluminium and copper metal are also expected to increase. The \$200 million expansion of the Tomago Aluminium Smelter has increased production capacity of the smelter by over 10 % (to 440 000 tpa capacity), most of which is destined for export markets. The redevelopment of the Port Kembla copper smelter is also expected to significantly boost the State's exports of copper metal. The Port Kembla smelter will have the capacity to produce 120 000 tpa of copper cathode, 40 % of which is expected to be exported. The Port Kembla copper smelter began commissioning in early 2000 and exported its first shipment of refined copper anodes in February 2001

Meanwhile development consent has been granted for Australian Silicon Pty Ltd's 30 000 tpa silicon metal smelter to be established near Lithgow, and the New South Wales Government has pledged \$240 million in support for the Aussteel Electric Arc Furnace steel mill in the Hunter.

Presently there are around 25 metallic and industrial mineral projects proposed for likely development over the next five years in NSW.

Higher commodity prices over 2000 have provided the impetus for a number of new mineral projects or extensions. Mining lease approvals in 2000 were granted to the Ardlethan Tin Project and the Ridgeway Gold Project.

The Ardlethan mine will produce around 7000 tonnes of tin during its productive life. The mine will employ up to 22 full time personnel and involves an investment of more than \$4.2 million in developing the project.

The \$375 million Ridgeway gold mine near Orange in central west NSW, will produce about 240 000 oz of gold and 24 000 tonnes of copper per annum for around 12 years, and employ about 200 full time personnel. Construction of the mine has begun and should be completed by April 2002.

Other projects likely to be developed in 2001 include the Cobar open cut mine and the New Occidental underground mine (linked by an underground drive to the Peak gold mine), the Brackin Spur extension to the Hillgrove gold and antimony mine and the \$139 million Lift 2 underground project at the Northparkes copper and gold mine.

A major new project that completed a bankable feasibility study in April 2000 and lodged a development application in November 2000 is the Syerston nickel-cobalt project owned by Black Range Minerals NL. Syerston is a lateritic nickel deposit located 6km north west of Fifield (and about 65km north west of Parkes) in central west NSW. Based on current studies the project could produce 25 000 tonnes of nickel and 5 000 tpa of cobalt requiring a capital expenditure of almost \$500 million on the lateritic nickel processing plant and associated project infrastructure. Subject to approvals and funding, project construction could begin during 2001-02, with project commissioning planned for 2003.

Other projects likely to commence development over the next few years are the Consolidated Broken Hill CML7 base metal project in the Old Broken Hill South Mine, the Cowal Gold project, 4km north west of West Wyalong, and the Tritton copper/gold project, 22km south west of Girilambone.

Industrial mineral projects at an advanced stage include the Lithgow silicon project and the Dubbo zirconia project.

The Murray Basin region of NSW has enormous economic potential as a world class minerals sands province. The total estimated coarse-grained mineral sand resources of the Murray Basin may exceed 85 million tonnes. Planning focus meetings have already been held to assist in the preparation of the EIS for the 12-Mile and Ginkgo mining projects, and BeMax's proposed Broken Hill mineral separation plant. Environmental

impact studies are underway for the Cylinder project with a planning focus meeting scheduled for the middle of 2001. Together these three projects will represent a capital investment of around \$200 million.

If all the potential mineral projects in NSW were to proceed over the next five years, this would involve a cumulative investment of about \$2 billion and generate over 2 000 direct jobs.

3. THE LEGISLATION

3.1 SUMMARY OF THE MINES INSPECTION ACT 1901

The Mines Inspection Act 1901 (the Act) came into force on 1 February 1902 and has been amended on more than 20 occasions since that time.

The objectives of the Act are to provide for the regulation and inspection of safety and health matters for metalliferous mines and quarries, as well as exploration sites for minerals other than coal and shale and to regulate the treatment of the products of such mines.

The Act is divided into seven functional Parts, with those parts being further sub divided into Divisions and sections. The functional Parts of the Act are discussed below:

Part 1 of the Act deals with preliminary matters. It contains provisions that repeal certain sections of former mining legislation, definitions of terms contained throughout the Act, and a section binding the Crown.

Part 2 caters for standards of competency for mine managers, "engine drivers" (ie operators of heavy machinery) and "shotfirers" (people who carry out blasting operations at mines). These standards vary according to the magnitude of an operation and the hazards associated with it. Major operations require designated persons to hold "certificates of competency", the standards for which are set by Boards of Examiners who are appointed by the Minister, and who operate according to rules set down by the Minister.

This Part requires all mines to have a General Manager responsible for the safety and health of the mining operation. If not suitably qualified the General Manager must employ a qualified Production Manager who lives in the vicinity and is responsible for daily supervision. In this Part, distinction is made between mines with less than 20 employees, in which the manager must hold a Production Manager's Permit to manage issued by the Chief Inspector of Mines who is satisfied that the manager has sufficient experience, and larger mines, where the qualified manager must hold a

Certificate of Competency assessed by a Board of Examiners with prerequisites being a degree in mining engineering, and 3 years acceptable experience.

Under this Part, the Minister is empowered to determine the classes of machinery that are required to be operated by certified persons. In the administration of this division the Minister has deemed that certificates are only required for winding engines and hoists raising personnel (s13(2)(a)). This administrative decision has been introduced in favour of training requirements of the General Rule (cl 16 &17) as a method of industry developed competency standards.

Part 2 also provides for Inquiries and penalties regarding the conduct of managers, engine-drivers and shotfirers in cases of unfitness (defined as incompetence or negligence) to carry out duties.

Part 3 seeks to restrict employment in mines of people below a certain age and to regulate working hours and arrangements.

The inspection provisions and provisions specifying management of mining operations is contained in Part 4.

Division 1 provides for the appointment (by the Governor under the terms of the Public Sector Management Act 1988) and powers of inspectors including the appointment of a Chief Inspector of Mines, who along with the other inspectors, have the role of visiting mines and enforcing safety standards and safe mining practices.

Division 2 requires mines to keep accurate survey plans of workings. These plans are essential for safety in underground mines. On completion of mining, plans must be deposited with the Minister. This Division also requires statistics and returns to be submitted to the Minister on request for the better utilisation of the State's resources and to ensure that mines are properly managed.

There is also a requirement for mine owners to submit details to the Chief Inspector as to the location of drillholes and material contained in cores or samples. This allows the Government to keep records of this information. Details must also be provided to an inspector of the opening and closing of mines and parts of mines. The Division also requires that abandoned mines must be protected for public safety.

This Part has recently been amended by the *Mines Inspection Amendment Act 1998* to provide that risk management strategies must be implemented when risks are identified and assessed in the operation of mining activities. Other recent amendments in the above Act and the *Mines Legislation Amendment (Mine Safety) Act 1998* have added provisions for the

notification of certain safety incidents, the availability of a wider range of investigative processes (including the holding of investigations by formally constituted Boards of Inquiry), the appointment of Mine Safety Officers and the set up and operation of an autonomous Investigations Unit within the Department of Mineral Resources. These provisions commenced on 30 July 1999.

Part 4A regulates, through permits, the operation of mines primarily used for tourism or educational purposes.

Part 5, which covered certain matters relating to the drainage of mines, has been repealed.

Part 6 enables the Governor to make general and special rules in relation to a wide range of health and safety matters for mining in general or for specific mining operations. The provisions contained in the Mines Inspection General Rule 1994 will be dealt with below.

The legal proceedings and miscellaneous provisions are covered in Part 7. The Part defines offences and defences available under the Act, the liability of mine owners and directors of corporations, provides for delegation of functions of the Minister and Director-General and provides a Regulation making power.

3.2 SUMMARY OF THE MINES INSPECTION GENERAL RULE 2000

The Mines Inspection General Rule 2000 (the General Rule) replaced the Mines Inspection General Rule 1994. The General Rule is made under section 56 of the Act. The General Rule makes provision in respect of the following matters:

- keeping of records at mines (clause 6);
- requirements as to permits (clauses 7 and 8)
- requirement for documentary instruments controlling safety and health at the mine; mine safety management plan (clause 9) and occupational safety and health policy (clause 10);
- general requirements for contractors working at a mine site (clause 11)
- general responsibilities of the manager of a mine with regard to the safety and health of workers and the safe working of the mine (clause 12);
- responsibilities of supervisors as to safe work methods and mine safety generally (clause 13);
- responsibilities of workers (clause 14);
- election and functions of employee representatives or check inspectors (clause 15);
- control of persons at mines (clause 16);

- to make an offence of remaining at a mine after directed to leave (clause 17);
- to prohibit the damage or misuse of anything provided at a mine for emergency or safety or health purposes (clause 18);
- risk management strategies (clause 19);
- procedures for major hazard management (clause 20);
- to plan for dealing with emergencies, the reporting of emergencies and the provision of first aid (clauses 21-23);
- to ensure work areas are inspected and checked by management in conjunction with employees (clause 24);
- the reporting of serious accidents and dangerous incidents and the keeping of records of certain accidents (clauses 25-26);
- terms of reference of Boards of Inquiry (clause 27);
- to require managers to report monthly to employees on the mine's occupational safety and health performance (clause 28);
- to require managers to give proper attention to health and safety related matters brought to their attention (clause 29);
- to ensure that workers have the ability to effectively communicate with each other and their supervisors for the purpose of instruction or training, or in the event of danger (clause 30);
- to require the adoption of procedures relating to fitness for work, including fatigue, alcohol and drugs (clause 31);
- to prohibit alcohol or drugs in mines (including the removal of persons under the influence where danger is likely to be caused) (clause 32);
- health surveillance of workers (clause 33);
- the provision of safety apparel and protective devices for workers (clause 34);
- the provision of change rooms, toilet facilities, drinking water and weather protection at mines (clauses 35-37);
- the general atmosphere and working environment of a mine (clauses 35);
- ventilation in mines (clauses 39-42);
- to require particular risk control measures in regard to noise management (clause 43);
- to ensure the safety and stability of mine workings (clause 44 and 45);
- the assessment and control of risks associated with the movement of unbroken ground and with inrush (clauses 46 and 47);
- design, construction etc. of buildings and structures at mines (clauses 48 and 49);
- the management of waste in mines (clause 50);
- general requirements regarding chemicals and hazardous substances including their use, handling and storage, health surveillance and documentation (clauses 51-55)
- particular requirements as to the use of asbestos, carcinogenic substances and hazardous chemicals (clauses 56-58);
- manufacture, handling, storage, conveyance and use of explosives at a mine (clauses 59-66);

- delivery, generation, storage, reticulation and use of energy (including electricity, compressed air, hydraulic pressure, steam and gas) at a mine (clauses 67-70);
- design, use, maintenance of equipment and machinery at mines (clauses 71-74);
- design, construction, installation, use etc. of shafts and associated winding facilities (including shaft conveyances) at mines (clauses 75-80);
- other matters of a minor, consequential or ancillary nature (clauses 1-5 and 81); and
- schedules of carcinogenic substances and hazardous substances for which specific health surveillance is required.

4. ANALYSIS OF THE MINES INSPECTION ACT AND ISSUES ARISING

4.1 REVIEW OF THE MINES INSPECTION ACT 1901

As specified in the Terms of Reference (attached at Appendix A), a pro-forma has been used to assist in the review of the Act:

The following pages contain the analysis of the Act as per the pro-forma.

PROPOSED TREATMENT OF PROVISIONS WITH COMPETITIVE IMPACT

Part: 1	Division:	Section(s): 1 to 4A
<p>Nature of Provisions: Provides all encompassing definitions of a mine, quarry, treatment plant, metal and mineral to ensure the health and safety at all mines, other than coal or shale mines, are covered by this Act.</p>		
<p>Market Failure Addressed / Government Objective: The Act provides specific safety and health legislation for the non-coal and shale mining, quarrying and mineral treatment industries. Further, the Act and regulations (known as the General Rule) are supported by industry standards and guidelines. The potential failure is that mining activity may take place without specific safety and health standards applicable to the operation taking place. The comprehensive definitions ensure that all mining activity is covered by the Act</p>		
Competitive Effect On:	Market Entry Barriers or Sanctions	Restriction on Competitive Behaviour
Personnel	All persons working in the mining industry are required to comply with the provisions of the Act and General Rule	All persons working in the mining industry must understand and abide by specific mining legislation which differs from other industries e.g. construction. The legislation requires high safety and health standards. High levels of personal training may be necessary.
Companies / Operations	All companies operating mines are required to comply with the provisions of the Act and General Rule	The mining industry has its own industry based legislation controlled by the inspectorate of the DMR
Industry Sector	The industry has specific regulation to address the specific risks in the industry's sectors namely, large metal, small metal, opal and gemstone mines and mineral sands, quarries and other extractive industry.	The Occupational Health and Safety Act applies to all industries in NSW.
Support Industries	Equipment suppliers and contractors must comply with specific legislation	All support industries must comply with the same mining industry standards
Mining Industry	The coal mining industry is subject to more prescriptive legislation requiring greater government intervention.	The legislation is less restrictive than for coal mining.
State	Similar mining legislation exists in other states	Similar mining legislation has been developed through the Chief Inspectors of Mines Conferences, part of ANZMEC (Australian & New Zealand Minerals and Energy Council).

Country	Along with other states, NSW has attempted, through amendments, to ensure this Act conforms with the requirements of the ILO Convention No. 176 "Safety and Health in Mines"	ANZMEC agreed that all States would work towards compliance with LO Convention No. 176
Effect of Competitive Restriction: To ensure that the non-coal mining industry operates to the highest possible safety and health standards, to ensure the safety and health of all persons working in the industry and in turn improve efficiency and profitability.		
Costs: The costs involved in complying with legislation could be in increased training requirements and maintenance of safety standards. This may result in lower productivity.	Benefits: Improved safety and health performance, less injuries and deaths. Improved production through less accidents and lost time, higher productivity and return to the State and community. Better community acceptance of the mining industry.	
Alternative Means to Achieve Result: No specific legislation for the mining industry with health and safety matters coming under the general provisions of the Occupational Health and Safety Act and WorkCover. This however would not necessarily take account of the specific risks and dangers of mining.		

PROPOSED TREATMENT OF PROVISIONS WITH COMPETITIVE IMPACT

Part: 2	Division(s): 1 and 2A	Section(s): 5 to 11 and 18B, 18C
<p>Nature of Provisions: The Act requires all mines to have a General Manager responsible for the safety and health of the operation. If not qualified the General Manager must employ a qualified Production Manager who lives in the vicinity and is responsible for daily supervision. Distinction is made between mines with less than 20 employees, in which the manager must hold a Production Manager's Permit to manage issued by the Chief Inspector of Mines who is satisfied that the manager has sufficient experience, and larger mines, where the qualified manager must hold a Certificate of Competency assessed by a Board of Examiners with prerequisites being a degree in mining engineering, 3 years acceptable experience. The Minister is empowered to make rules for the operation of the Board and the qualification requirements for applicants.</p>		
<p>Market Failure Addressed / Government Objective: Persons without sufficient competency (experience and knowledge) may otherwise be appointed to such positions, thereby jeopardising workplace safety.</p>		
Competitive Effect On:	Market Entry Barriers or Sanctions	Restriction on Competitive Behaviour
Personnel	General Manager must be competent and live in the vicinity. In mines employing over 20 people, production must be managed by a person with engineering qualifications, 3 years experience and a production managers certificate. For smaller mines the production manager must be considered competent and experienced by the Chief Inspector of Mines.	Production and General Manager positions must be qualified or experienced. There may be costs, both monetary and time, involved in gaining qualifications and competency standards
Companies / Operations	Unless suitable people are employed then mine is not permitted to operate.	Fines imposed if operating without suitable personnel. Potential high cost of recruitment of qualified staff if not locally available.
Industry Sector	Small metal mines, most quarries, opal and gem mines will employ less than 20 people, therefore the requirement that the production manager hold a permit may impede market entry in some circumstances.	If a mine employs more than 20 people then restriction applies that the production manager must hold a certificate of competency.
Support Industries	-	
Mining Industry	Similar standards required of management across industry	Similar standards required of management across industry.

State	Similar qualification requirements in all States. Mutual recognition of qualifications guaranteed in legislation.	Similar qualification requirements in all States. Mutual recognition of qualifications guaranteed in legislation.
Country	Qualifications and expertise gained overseas may not be recognised in Australia by Board of Examiners	More training or study may be required to qualify for certification. Overseas companies would have to employ local qualified managers.
Effect of Competitive Restriction: To provide for the management of mines by qualified and competent people.		
Costs: Administrative costs including Board of Examiners, enforcement of compliance, certification, assessment, and training of examiners.		Benefits: Better managed mines should ensure less injury, higher production and recovery of the State's resources, safer direction of employees by competent managers and improved acceptance of the mining industry by the community
Alternative Means to Achieve Result: The Department has been working with tripartite groups towards the development of competency standards. The 1998 Amendments to this Act are a step in this direction. Reliance on general safety and health provisions contained in the OH&S Act.		

PROPOSED TREATMENT OF PROVISIONS WITH COMPETITIVE IMPACT

Part: 2	Division(s): 2 and 2B	Section(s): 12 to 18A
<p>Nature of Provisions: These divisions seek to require persons who operate machinery or blasting equipment used in mines (shotfirers) to be certified. The Minister is empowered to determine the classes of machinery that are required to be operated by certified persons. In the administration of this division the Minister has deemed that certificates are only required for winding engines and hoists raising personnel (s13(2)(a)). This administrative decision has been introduced in favour of training requirements of the General Rule (cl 16 &17) as a method of industry developed competency standards.</p>		
<p>Market Failure Addressed / Government Objective: As mining is a very high risk activity, these provisions seek to ensure safe and competent operation of machinery and blasting equipment used in mines. Where no industry-based certification is in place then the Board of Examiners issues certificates under these provisions. The Department is currently monitoring performance of training standards for machinery operators to ensure health and safety standards are maintained, while maintaining provisions in the Act for the Minister to regulate the certification of certain machinery operators if required</p>		
Competitive Effect On:	Market Entry Barriers or Sanctions	Restriction on Competitive Behaviour
Personnel	Competency certificates are required for winders and hoist operators that raise or lower people and persons handling explosives. Other machinery operators need to be trained in accordance with industry competency standards	Operators must be trained to be permitted to work in certain jobs.
Companies / Operations	Must have qualified shotfirers and people operating machinery	If no trained people available, there will be a need for training of personnel
Industry Sector	-	Qualification as a shotfirer required for all above ground blasting and underground blasting of holes >100mm diameter
Support Industries	-	-
Mining Industry	No certification required in coal industry	No certification required in coal industry
State	Similar certification in other States	Similar certification in other States
Country		

Effect of Competitive Restriction: To enable the use of explosives and the raising and lowering of people in mines to be carried out in a safe manner for both the operators and other workers.	
Costs: Costs of government inspectors. Higher initial production costs.	Benefits: Safer workplace. Better trained staff which would lead to production efficiencies and lower costs through less injury.
Alternative Means to Achieve Result: The Minister may re-prescribe that certificates of competency are required for all engine-drivers. Independent assessors appropriately accredited by the Department could be used instead of the Inspectorate to check on compliance with the legislative requirements for appropriate training and certification	

PROPOSED TREATMENT OF PROVISIONS WITHOUT COMPETITIVE IMPACT

Part: 2	Division: 3	Section(s): 19 to 24
Nature of Provisions: To provide for Inquiries and penalties regarding the conduct of managers, engine-drivers and shotfirers in cases of unfitness (incompetence, negligence) to carry out duties.		
These provisions are considered primarily administrative in nature and do not impact on competition in the industry.		

PROPOSED TREATMENT OF PROVISIONS WITH COMPETITIVE IMPACT

Part: 3		Division: 2	Section(s): 26 to 31
Nature of Provisions: To restrict employment in mines of people below a certain age and to regulate working hours and arrangements.			
Market Failure Addressed / Government Objective:		There is potential for the fatigue of workers to impact on their performance. As mining is very high risk work there is seen to be a need for legislation to ensure safe working arrangements in mines and limits to the hours of work of individuals in order to lessen the effect of these 'fitness for work' issues. It is also required so that young people are not employed in potentially hazardous situations.	
Competitive Effect On:	Market Entry Barriers or Sanctions	Restriction on Competitive Behaviour	
Personnel	People below a certain age are restricted from certain mining jobs. Restrictions are placed on the length of time workers are allowed on the job.	Stops certain classes of people working in some mining jobs. There are also restrictions placed on hours worked and arrangements for working.	
Companies / Operations	Hours of work and records of employment must be maintained for workers under 18.	Companies may not allow individuals to work more than a certain number of hours or a certain number of days in a given period. Flexible working arrangements only permitted if 65% of the affected persons agree.	
Industry Sector	-	-	
Support Industries	-	-	
Mining Industry	Generally restricts employment of people under 18 years		
State	Chief Inspector of Mines has similar powers in other states		
Country	The ILO Conventions "Minimum Age (Underground Work)" 1965 and "Abolition of Forced Labour" 1957 recommend minimum ages for workers.	The ILO Conventions "Minimum Age (Underground Work)" 1965 and "Abolition of Forced Labour" 1957 recommend minimum ages for workers.	
Effect of Competitive Restriction: To restrict the working arrangements of mine workers in order to ensure that people are alert on the job and to limit young people from working in potentially hazardous mining operations.			

Costs: Administrative cost of inspections to determine compliance	Benefits: Inexperienced and young people are not exposed to potentially dangerous working situations. Alert workforce leading to higher safety and potentially greater productivity. More flexible work arrangements in shiftwork and employees protected from working excessively.
Alternative Means to Achieve Result: It would be possible to rely partly on alternative, non-mining specific, legislation such as the Occupational Health and Safety Act.	

PROPOSED TREATMENT OF PROVISIONS WITH COMPETITIVE IMPACT

Part: 4		Division: 1	Section(s): 32 to 40
Nature of Provisions: To provide for the appointment, and powers of inspectors			
Market Failure Addressed / Government Objective:		Inspectors ensure the provisions of the Act are complied with and protect the safety and health of people employed in mines	
Competitive Effect On:	Market Entry Barriers or Sanctions	Restriction on Competitive Behaviour	
Personnel	Qualifications and experience must be held before being considered for a position as an Inspector.	Qualifications and experience must be held before being considered for a position as an Inspector. There are costs involved in obtaining qualifications	
Companies / Operations	-	Mines must operate safely according to the Act. Operators must comply with directions given by inspectors and must assist the inspector in carrying out duties. There is the possibility of differential interpretations and decisions being made by different Inspectors. There are also costs to mine operators in complying with directions given by Inspectors and time costs to companies while inspections are being undertaken.	
Industry Sector	-	-	
Support Industries	Inspectors may review the safety of work practices, new products and equipment and require changes to satisfy safety concerns if not satisfactory.	Cost of redesign and/or manufacture of equipment. Cost of redesign of work practices.	
Mining Industry	Similar powers throughout mining industry	-	
State	Similar powers in other States		
Country		ILO Convention No 81 on "Labour Inspection" published in 1947 requires a "sufficient number of appropriately qualified	

		inspectors”
Effect of Competitive Restriction: Ensuring profitability and competitiveness of the mining industry through high standards of OH&S.		
<p>Costs: Employment of Inspectors, training costs and on-costs of carrying out inspections</p>	<p>Benefits: Improved safety performance leading to a better acceptance of mining by the community. Inspectors visit all mines sites thus there is assurance for workers that inspectors will oversee safety and direct companies to provide safe working environment. Inspectors develop and raise industry standards and ensure consistency across industry assisting companies to increase productivity and returns. Employees and employers also have independent adjudicators on safety concerns. Managers have mentors available for expert advice. Well qualified inspectors have far greater credibility and therefore greater impact than less well qualified inspectors.</p>	
<p>Alternative Means to Achieve Result: Replace these provisions by self-audit by companies regulated by Government. This would entail greater cost to the industry in employing inspectors and implementing inspection regimes, however net costs to the community may not necessarily be higher. Allow private inspectors to operate, regulated, accredited or tendered out by Government. This would have to be paid for either by the Government or individual companies. WorkCover inspectors may be able to do inspection functions. Charge mines for inspections.</p>		

PROPOSED TREATMENT OF PROVISIONS WITH COMPETITIVE IMPACT

Part: 4	Division: 2	Section(s): 41 - 45
<p>Nature of Provisions: Requires mines to keep accurate survey plans of workings. These plans are essential for safety in underground mines. On completion of mining, plans must be deposited with the Minister. This Division also requires statistics and returns to be submitted to the Minister on request for the better utilisation of the State's resources and to ensure that mines are properly managed. Requires mine owners to submit details to the Chief Inspector as to the location of drillholes and material contained in cores or samples. This allows the Government to keep records of this information. Details must also be provided to an inspector of the opening and closing of mines and parts of mines. The Division also requires that abandoned mines must be protected for public safety.</p>		
<p>Market Failure Addressed / Government Objective: Mineral Resources are generally state-owned. This Division ensures proper long-term management of the resources by requiring mines to keep and lodge accurate plans, lodge statistics and returns to the Government and provide details of opening and closing of workings. This assists in ensuring safety in mines by allowing proper planning.</p>		
Competitive Effect On:	Market Entry Barriers or Sanctions	Restriction on Competitive Behaviour
Personnel	-	-
Companies / Operations	Competent mine surveyors must be employed or contracted to produce plans. Records must be kept on all aspects of the mining operation as this information may be requested by the Minister or Director-General.	Before the commencement of operations, accurate plans must be prepared of proposed workings and drillholes. Preparation and collection of information may cause administrative costs to companies.
Industry Sector	If a mine employs more than 20 people then plans must be kept and furnished to the Minister on completion of mining.	Small metal mines, most quarries, opal and gem mines will employ less than 20 people, therefore plans are not required unless there is considered to be a high risk by the Chief Inspector. Preparation and collection of information may cause administrative costs to companies.
Support Industries	-	-
Mining Industry	Similar provision are in place in the Coal Mines Regulation Act	Similar provision are in place in the Coal Mines Regulation Act
State	Similar mining legislation exists throughout Australia	Similar mining legislation exists throughout Australia

Country		
Effect of Competitive Restriction: To provide legislative force to the goals of having safe workings and effective utilisation of resources in operating mines and to protect public safety around abandoned mines		
Costs: Administrative costs to determine compliance, collection and storage of records	Benefits: Better managed and regulated mining should ensure less injury, higher production and recovery of the State's resources.	
Alternative Means to Achieve Result: Remove requirement for keeping of plans and leave this up to individual operations (however this may not ensure safety and resource management standards). Industry could collect statistics. Information regarding drillholes is covered by the Mining Act and could be removed from this legislation. If abandoned mines are not protected then the Government will bear the full cost of remediation and possibility of large public liability.		

PROPOSED TREATMENT OF PROVISIONS WITH COMPETITIVE IMPACT

Part: 4	Division: 3	Section(s): 46
Nature of Provisions: Risk management strategies must be implemented when risks are identified and assessed in the operation of mining activities		
Market Failure Addressed / Government Objective: Possible inadequate commercial incentives to ensure that risk of injury is minimised.		
Competitive Effect On:	Market Entry Barriers or Sanctions	Restriction on Competitive Behaviour
Personnel	-	-
Companies / Operations	Risk management strategies must be in place. Documented safe systems of work, with monitoring and review processes are required	Risk management strategies must be in place. Documented safe systems of work, with monitoring and review processes are required. Cost involved in the preparation of safety management plans. Possible employment of OH&S specialists.
Industry Sector	-	-
Support Industries	Higher standards apply for this industry, therefore risk assessment must be undertaken on new equipment, for example.	Cost of ensuring standards are high for mining industry. Higher standards apply for this industry, therefore risk assessment must be undertaken on new equipment, for example.
Mining Industry	-	-
State	-	Similar risk assessment strategies are being pursued through the Chief Inspectors of Mines Conferences, part of ANZMEC
Country		
Effect of Competitive Restriction: Effective planning and assessment of health and safety risks will ensure lower injury rates and deaths in the industry.		

Costs: Cost to Government of Inspectors reviewing companies risk assessment strategies. Implementation of programs for the Inspectorate concentrating on risk management identification.

Benefits: Greater safety, better management, lower injury and less mining accidents and disasters through better planning.

Alternative Means to Achieve Result: Rely on general duty of care under the OH&S Act.

PROPOSED TREATMENT OF PROVISIONS WITH COMPETITIVE IMPACT

Part: 4A	Division:	Section(s): 48A-48DP
Nature of Provisions: To regulate the operation of mines used for tourist and educational activities.		
Market Failure Addressed / Government Objective: To ensure the safety of visitors and operators of mines primarily used for tourist and educational activities. This is achieved through the issuance of conditional permits		
Competitive Effect On:	Market Entry Barriers or Sanctions	Restriction on Competitive Behaviour
Personnel	-	-
Companies / Operations	Companies must have a permit to operate which is issued once the Minister is satisfied of the mine's safety	
Industry Sector	-	-
Support Industries	-	-
Mining Industry	Similar provisions are contained in the Coal Mines Regulation Act	-
State	Similar provisions are not covered in safety legislation in other states	
Country	No similar provisions are known in other countries.	
Effect of Competitive Restriction: An additional level of regulation is placed on tourist / educational mines to provide adequate visitor and worker safety.		
Costs: Administrative costs involved in inspection/collection of safety information and in the issuance of permits		Benefits: Safe conditions of these facilities
Alternative Means to Achieve Result: Removal of legislation and regulations and allow common law public liability to ensure that operators provide safe environments for visitors. Reliance on a code of practice rather than specific legislation.		

PROPOSED TREATMENT OF PROVISIONS WITH COMPETITIVE IMPACT

Part: 6	Division: 1& 2	Section(s): 56-58
Nature of Provisions: To enable the Governor to make rules (ie regulations) that provide for general or specific matters in relation to safety and health in mines		
Market Failure Addressed / Government Objective: General or specific matters of health and safety come up from time to time that require notice to be given to mining operations or that require regulation so as to ensure mining practices are safely undertaken.		
Competitive Effect On:	Market Entry Barriers or Sanctions	Restriction on Competitive Behaviour
Personnel Companies / Operations Industry Sector Support Industries Mining Industry State Country	<p>The general rules or specific rules can apply to specific types of mines, individual mines or all (non-coal) mines, The rules may deal with specific aspects of mining and administration of mining-related activities. The rules have the potential to be competitively restrictive or provide market entry barriers and they need not be consistently applied across all mining.</p> <p>All other states have regulations for safety in mines and various ILO Conventions can be satisfied through the making of regulations.</p>	
Effect of Competitive Restriction: Dependent on any general or special rules made from time to time.		
Costs: Costs to Government in making and administering the general or special rules. Compliance costs for industry.		Benefits: Enables individual safety concerns and issues of safety that come up from time to time to be addressed expeditiously.
Alternative Means to Achieve Result: No rules prescribed, deal with matters as they come up via industry bodies or with the support of government through guidelines, or through an industry code of practice.		

PROPOSED TREATMENT OF PROVISIONS WITHOUT COMPETITIVE IMPACT

The remaining provisions of the Mines Inspection Act 1901 are considered primarily administrative in nature and do not impact on competition in the industry.

Part: 4	Division: 4	Section(s): 47-47P
Nature of Provisions: To provide for notification and inspections of serious accidents, dangerous incidents and certain diseases in mines. To enable the Minister to call for special reports into a serious accident or dangerous incident. To enable Boards of Inquiry to be set up into serious accidents, incidents, practices or other safety matter at a mine.		
Part: 6	Division: 3	Section(s): 65 - 66
Nature of Provisions: To provide for the publication of special rules		
Part: 7	Division: 1	Section(s): 67 - 75
Nature of Provisions: To provide legal administration of the Act		
Part: 7	Division: 2	Section(s): 76 - 82
Nature of Provisions: Miscellaneous provisions consequential to the administration of the Act.		
Part: Schedules	Division:	Section(s):
Nature of Provisions: Savings and transitional arrangements consequential to the proclamation and application of certain amendments to this and various Acts.		

4.2 SUMMARY OF FINDINGS AND OPTIONS IDENTIFIED

In undertaking the analysis in Section 4 it has been determined that the following areas of the Act have a competitive impact. The costs and benefits of these have been determined along with options that may be pursued to achieve the same result intended by the current legislative provisions but without the competitive restriction.

(a) The need for specific mining industry safety legislation

The Act provides specific safety and health legislation for the non-coal and shale mining, quarrying and mineral treatment industries. The Act and the General Rule are also supported by industry standards and guidelines developed by the Department with the industry. Without the Act mining could take place without specific safety and health standards applicable to the operation taking place. The comprehensive definitions contained in the Act ensure that all mining activity (other than coal and shale mining) is covered by the Act.

Costs: The costs involved in complying with legislation could be increased training requirements and maintenance of safety standards

Benefits: Improved safety and health performance, less injuries and deaths. Improved production through less accidents and lost time, higher productivity and return to the State and community. Better community acceptance of the mining industry.

Options: No specific legislation for the mining industry with health and safety matters coming under the general provisions of the Occupational Health and Safety Act.

(b) Certification of functions

As mining is a very high risk activity, the Act contains provisions that are designed to ensure qualified and competent management and safe and competent operation of machinery and blasting equipment used in mines through certification.

Costs: Administrative costs including the Boards of Examiners, enforcement of compliance, certification, assessment, and training of examiners. Costs of government inspectors. Higher initial production costs.

Benefits: Better managed mines should ensure less injury, higher production and recovery of the State's resources, safer direction

of employees by competent managers and improved acceptance of the mining industry by the community. Better trained staff which would lead to production efficiencies and lower costs through less injury.

Options: (1) Competency standards. It should be noted that the Department has been working with tripartite groups towards the development of competency standards. The 1998 Amendments to the Act are a step in this direction.

(2) The Minister may re-prescribe that certificates of competency are required for all engine-drivers.

(3) Independent assessors appropriately accredited by the Department could be used instead of the Inspectorate to check on compliance with the legislative requirements for appropriate training and certification

(c) Work limitations

It is seen as imperative that mining is conducted with safe working arrangements. Limits placed on the hours of work that individuals may do are intended to ensure that risks to health and safety are avoided. It is also required by international convention that young people are not employed in potentially hazardous situations.

Costs: Loss of flexibility for the company to set working arrangements. Administrative cost of inspections to determine compliance.

Benefits: Safety of young people. Controls put in place to address fatigue issues leading to higher safety and potentially greater productivity. Protection from damaging work arrangements in shiftwork and employees protected from working excessively.

Option: It would be possible to rely partly on alternative, non-mining specific, legislation such as the Occupational Health and Safety Act.

(d) The Inspectorate

The Inspectorate is set up to verify that the provisions of the Act are complied with and to protect the safety and health of people employed in mines.

Costs: Employment of Inspectors, training costs and on-costs of carrying out inspections

Benefits: Safer mining industry leading to a better acceptance of mining by the community. Inspectors visit all mines sites thus there is assurance for workers that inspectors will oversee safety and direct companies to provide safe working environment. Inspectors develop and raise industry standards and ensure consistency across industry. Employees and employers also have independent adjudicators on safety concerns. Managers have mentors available for expert advice. Well qualified inspectors have far greater credibility and therefore greater impact than less well qualified inspectors.

Options:(1) Replace these provisions by self-audit by companies regulated by Government. This may entail greater cost to the industry in employing inspectors and implementing inspection regimes.

(2) Allow private inspectors to operate. These may be regulated, accredited or tendered out by Government. This would have to be paid for either by the Government or individual companies.

(3) Reliance on the Inspection provisions of the OH&S Act with WorkCover inspectors able to do certain inspection functions.

(4) Charge mines for inspection services.

(e) Mining plans

The requirement for mines to keep accurate survey plans of workings is essential for safety in underground mines. As mineral resources are state-owned this also enables long-term management of the resources by requiring mines to keep and lodge accurate plans, lodge statistics and returns to the Government and provide details of opening and closing of workings. This assists in ensuring safety by providing proper planning.

Costs: Administrative costs to determine compliance, collection and storage of records. Cost of creating document.

Benefits: Better managed and regulated mining should ensure less injury, higher production and recovery of the State's resources.

Options:(1) It may be possible to remove the statutory requirement for keeping of plans and leave this up to individual operations, however this may not ensure safety and resource management standards. If abandoned mines are not protected then the Government will bear the full cost of remediation and possibility of large public liability.

(2) Information regarding drillholes is covered by the Mining Act and could be removed from this legislation.

(f) Risk management

This provision was introduced in the 1998 Amendment Act. The implementation of risk management strategies, including design of safe work systems is intended to ensure risk is minimised.

Costs: Cost to Government of Inspectors reviewing companies risk assessment strategies. Implementation of programs for the Inspectorate concentrating on risk management identification. Cost to industry in developing and implementing safe work systems.

Benefits: Greater safety, better management, lower injury and less mining accidents and disasters through better planning.

Option: Rely on the "performance based" regulatory model in the OH&S Act.

(g) Use of mine sites for tourist/educational purposes

The safety of visitors and operators of mines primarily used for tourist and educational activities needs appropriate protection. This is achieved through the issuance of conditional permits

Costs: Administrative costs involved in inspection/collection of safety information and in the issuance of permits, and compliance with permit requirements.

Benefits: Safe conditions of these facilities

Option: (1) Removal of specific legislation and regulations which would allow either the general duties contained in the OH&S Act or common law public liability to ensure that operators provide safe environments for visitors.

(2) Develop a code of practice to cover this area.

(h) Regulation making powers

The regulation making powers enable the Governor to make rules that provide for general or specific matters in relation to safety and health in mines. General or specific matters of health and safety come up from time

to time that require notice to be given to mining operations or that require regulation so as to ensure mining practices are safely undertaken. While it is common for most legislation to allow for the making of subordinate legislation such as regulations, the specific provisions contained in the regulations may be competitively restrictive.

Costs: Costs to Government in making and administering the general or special rules. Costs of compliance to industry.

Benefits: Enables individual safety concerns and issues of safety that come up from time to time to be addressed expeditiously.

Option: Rely on the general duty outlined in the OH&S Act.

The analysis of the General Rule (Section 5.1, following) contains a broader summary of the competitive restrictions that relate to this point (h) found in the General Rule.

5. ANALYSIS OF THE GENERAL RULE AND ISSUES ARISING

5.1 REVIEW OF THE MINES INSPECTION GENERAL RULE 2000

The review of the General Rule in terms of National Competition Policy requires a slightly different approach from that given to the Mines Inspection Act itself, as the General Rule sets out specific practices and policies in regard to the management and control of health and safety in mines. It is therefore considered that a more comprehensible method would be to deal with any potentially anti-competitive provisions generally rather than using the pro-forma approach. This process also, therefore, provides a summary of the issues concurrently with the review.

The changes in the General Rule 1994 to the General Rule 2000 provide greater safety flexibility through site based systems and planning. Many of the newly introduced provisions, such as the requirement for mine safety management planning and procedures for the management of hazards, are designed to enable mine managers to develop effective safety and health systems.

To a great extent the new General Rule has been developed within the framework of the principles of national competition policy. However, there remain some provisions that continue to impact on the competitive nature of the mining industry.

Part 1 of the General Rule (clauses 1 to 5) provides definitions and advice on the application of the Rule and is considered administrative in its nature and does not impact on competition.

Some of the remaining clauses of the General Rule are considered to potentially be able to give rise to competitive restrictions. In the analysis of these clauses below, thought must be given to the rationale for restrictions in order to balance the competitive impact with broader safety issues and community benefit.

General Rule clauses with competitive impact:

Part 2

Clause 6 provides that records required to be kept under the Act or the General Rule must be kept for at least 3 years. This may be necessary to assist in the investigation of incidents.

Division 2 requires all mines to develop and implement mine safety management plans, OH&S policies and programs to manage hazards and for contractors to have safety management plans. The division also requires communication of the policies and for management to ensure all persons are adequately trained and supervised.

Clause 12 specifies that systems must be in place to ensure effective communications with all persons employed at the mine. The clause also states that, where practicable in underground mines, 2 exits must be provided for egress to the surface. Management must also have systems in place to be aware of the names and approximate location of employees underground.

Clause 15 gives employees representatives or check inspectors certain powers to represent fellow employees with respect to safety matters in a mine. Management must accommodate the employees representatives or check inspectors in the carrying out of their duties.

Division 4 requires mine management to undertake risk assessments and develop procedures to deal with the hazards involved in the operation of the mine. Like division 2 above, documentation, consultation and continuous evaluation of the assessments and procedures are required.

Clause 21 provides that management must ensure that plans and procedures are in place to manage all foreseeable emergencies. Clause 22 also requires adequate first aid facilities on site and clause 23 provides for the events that require reporting to an inspector as an emergency. Emergency planning for all hazardous workplaces, including mining, is required in order to be integrated with local emergency services procedures to comply with the State Emergencies and Rescue Management Act 1989.

Division 7 provides for reporting and recording of serious accidents and dangerous incidents and requires managers to report monthly to employees on the mine's occupational safety and health performance.

The Rules in this Part are competitively restrictive in that they place more demanding requirements on mining companies than in other industries, and are generally more stringent than in many other countries. However these Rules are designed to provide safety systems and best practice, with flexibility so that these requirements are not onerous.

The alternative to having these Rules could be to allow for the development (with industry and employee representatives) of codes of practice or guidelines covering these matters. Although this should be balanced by the requirements for legislative control and regulation

contained in international treaties and conventions that the Government is committed to implement.

Part 3

Clauses 31 and 32 require management to have policies and practices in place to deal with fitness for work issues arising from alcohol, drugs and fatigue and to identify and remove employees who are incapacitated by alcohol or drugs from a mine site.

Division 3 requires the provision of change rooms, toilet facilities, drinking water and weather protection at mines. This is a duty of care on management to provide adequate facilities in line with industry standards. Mines are not a clean working environment and are often situated far from other facilities of this nature.

Clause 33 requires medical screening of employees to ensure health can be properly monitored during employment. This type of Rule may not be appropriate in other industries. However, there are well known diseases such as silicosis which are potentially common in the mining industry and there are seen to be benefits to both employee and employer in health monitoring, despite the costs. There are also obligations under international conventions such as ILO Convention 176, that obligate regulatory control in this matter.

Division 4 provides that all underground workings must be adequately ventilated with a requirement for controls, plans and monitoring of airflows. This is an area unique to the underground mining industry and therefore specialist knowledge is required.

It is currently the prevailing view that regulatory oversight in high risk areas may be necessary to ensure safety. The general principles behind these clauses do not have particular competitive impacts in themselves, however, some aspects of their implementation and compliance have the potential to do so.

The hazards associated with these processes have particular impacts in the mining industry. It is important that proper knowledge and practice is maintained so that potential disasters are avoided.

The option of the removal of specific regulation and the reliance on general duties of care to provide adequate safety and health would not be possible in this Part as the matters being dealt with are required by various international conventions.

Part 4

Division 1 requires mine workings to be conducted and maintained safely and stably, and for assessment and control of hazards of inrush and ground movement. While these clauses may place certain costs on mine owners, they

are not prescriptive and allow for site-specific design solutions based on industry standards for compliance by managers.

In reviewing these ground control provisions, it must be noted that the Inspectorate, having the expertise, provides an important monitoring role.

Clauses 48 and 49 deal with safety in the design, construction and maintenance of all buildings and structures on mine sites. Management must make plans and specifications available to inspectors of any proposed constructions or buildings being constructed, if requested. This again has the potential to constrain a company's ability to operate freely in the marketplace.

Local government already has jurisdiction over building safety, however, building and constructions at mine sites do have an impact on the overall safety schemes and may require specific supervision from the Inspectorate. These provisions ensure that issues relating to buildings and other structures are integrated into the overall design and operation of the mine. The removal of these provisions and reliance on general planning legislation and building codes may be an option.

Clause 50 provides that waste materials must be handled and stored safely and that management must adequately train and inform relevant employees in the procedures for dealing with emergencies involving waste materials.

Division 4 contains general requirements regarding chemicals and hazardous substances including their use, handling and storage, health surveillance and documentation and particular requirements as to the use of asbestos, carcinogenic substances and hazardous chemicals.

Much of this division was added to the General Rule 2000 to satisfy the requirements of ILO conventions. These conventions are specific in their nature and while there are many provisions that impact on a mine as a business these would not generally be competitively restrictive as they apply equally to businesses that are not mines and in all states of Australia.

Division 5 deals with the manufacture, handling, storage, conveyance and use of explosives at a mine and provides that managers must ensure that the use of explosives is undertaken safely and by qualified persons.

Restrictions on the appointment of competent shotfirers are applied to above-ground mines and underground blasting of large diameter drillholes (i.e. those more than 100mm) primarily for third-party or public safety reasons, and, while the safe use of explosives is of paramount importance, this could be seen to apply unfairly to certain sectors of the industry and not others.

Clause 62 provides that shotfirers must hold a qualification issued by the Department. This, and other similar qualification provisions of the Act could afford market entry sanctions for personnel and may be seen as over-regulatory. The Department is working jointly with the industry to develop appropriate competencies and assessments.

Division 6 deals with the delivery, generation, storage, reticulation and use of energy (including electricity, compressed air, hydraulic pressure, steam and gas) at a mine. Management must ensure energy used in a mine is done so in accordance with Australian Standards, with a requirement to notify the Inspectorate of the introduction or alteration of power supplies.

While this may be seen as an intrusion into the decision making ability of mine owners and managers, high risk situations such as the utilisation of energy sources in confined areas or dangerous places such as mines may warrant oversight. Equally, the general duty of care provisions may, in fact, render such provisions as unnecessary.

If the Inspectorate were not the control authority, then local government or other agencies may be able to take this role. However, the Inspectorate has specific expertise in high voltage energy use in mines and it may be more appropriate for the Inspectorate to have this function than local government. Alternatively, the removal of any controls and reliance on the general duties of care under general OH&S legislation should be examined to ascertain whether this could offer the same degree of safety.

Division 7 places the responsibility on the manager of a mine to ensure that all equipment and machinery at the mine is designed, used, maintained, repaired, replaced and adequately guarded. Equipment and machinery must also be isolated as required. For all equipment and machinery, safe systems of work must be in place in order to comply with these clauses in practice.

An alternative to these provisions of the General Rule could be to further the progress this systems-based approach and lessen the oversight by the Inspectorate.

Part 5

The design, construction, installation, use etc. of shafts and associated winding facilities (including shaft conveyances) at mines is dealt with in this Part. Inspectors must be notified of any construction of a shaft and associated equipment, a procedural issue to ensure that these facilities are safe.

Clauses 78-80 require specified safety features on winding systems and conveyances.

The Inspectorate is used as a knowledge base to assist mine managers to monitor the management of hazards associated with shafts and winding equipment. The competitive implications of these clauses in constraining free market operation, need to be viewed with this in mind to determine whether the removal of such requirements would be detrimental to safety in the long term.

As with some of the items above, the general principles behind these clauses do not have particular competitive impacts in themselves, however, some aspects of their implementation and compliance have the potential to force greater costs on the mining industry compared to other industries. Again, this must be viewed in light of the dangerous nature of mining and weighed up against the role that the Inspectorate can play in assisting management of hazards.

It should be noted that having regulations that specify certain actions required to be taken, such as those in the General Rule that have been found to have a competitive impact, will have a competitive impact irrespective of what the particular regulation imposes. That is, alternative forms of regulation may, in general, be competitively restrictive. However, certain forms of regulation, may lessen the costs to industry and provide a better means of ensuring a safer mining industry.

Options are available such as relying on the OH&S Act and Regulations in providing for a less prescriptive 'general duty of care' regulatory framework. However it must be noted that the Regulations to the OH&S Act, which do not currently apply to the mining industry, do have similar arrangements to those discussed above in the General Rule.

A further option could be to rely more heavily on codes, standards or guidelines published by the Department, industry or conjointly. This may not have the effect of relieving any competitive restrictions as the Government is bound by various ILO Conventions (discussed in Part 1.3) to provide specific, binding, regulatory references to the health and safety matters outlined in the Conventions.

APPENDIX A

New South Wales

APPLICATION OF NATIONAL COMPETITION POLICY

Review of the Mines Inspection Act 1901 and Coal Mines Regulation Act 1982

TERMS OF REFERENCE

1. Scope of Review

Relevant Legislation

The Mines Inspection Act 1901 and the Coal Mines Regulation Act 1982 together with Subordinate Legislation (the Legislation).

Review Approach

The review Committee will conduct the review in accordance with the New South Wales Government's definition of the term "legislation that restricts competition" in order firstly to determine whether the requirements of the Legislation restrict competition. Accordingly, the review will determine whether the relevant provisions:

- a) establish market entry barriers or sanctions;
- b) require conduct which has the potential to restrict competitive behaviour in the relevant market;
- c) have costs which are not known, are unnecessarily high or may not be outweighed by public benefits.

These aspects will be considered firstly at a whole of statute, macro level and then in Part by Part of the Legislation. Competitive impacts will be considered at personal, company/operation, industry sector, support industry, whole industry, State and National levels.

If the Committee finds that the relevant provisions of the Legislation restrict competition, it will review those provisions in accordance with the terms of reference for legislation reviews set out in the National Competition Principles Agreement. The prime guiding principle of the review will be that legislation should not restrict competition unless it can be demonstrated that:

- a) the benefits of the restriction to the community as a whole outweigh the costs and
- b) the objectives of the legislation can only be achieved by restricting competition.

Without limiting the scope of the review, the Committee will:

- a) clarify the objectives of the legislation;
- b) identify the nature of the restrictive effects on competition;
- c) analyse the likely effect of any identified restriction on competition on the economy generally;
- d) assess and balance the costs and benefits of the restrictions identified and
- e) consider alternative means for achieving the same result, including non-legislative approaches.
- f) identify any issues of market failure which need to be, or are being addressed by the legislation

Provisions of the Legislation found to restrict competition will be subject to consultation with relevant industry and public stakeholders and other interested parties.

The review, including consultation, will provide input data to necessary regulatory reform in the light of National Competition Policy.

2. Review Methodology

Initial Analysis

Initial analysis of the Legislation will be in the terms of the Scope of Review outlined above. A substantive part of that analysis will be recorded on a pre-prepared pro forma a sample of which is Attachment A.

Consultative Framework

Products of the initial analysis will be taken forward to a consultative process. A key component of that process will be to draw on revised industry consultative arrangements which have as a peak body a tri-partite Mine Safety Council (MSC). It is anticipated that the MSC will set direction for its supporting advisory groups to consider matters relevant to the respective industry sectors. It will be at industry sector level that canvassing of the constituencies represented on the Groups will occur. The MSC and supporting groups have been carefully structured to involve appropriate industry stakeholders.

An overview of the proposed industry consultative framework appears as Attachment B. The relationship between the peak council and supporting groups is illustrated together with principals on which the model is based. The particular role of the MSC and its relationship with the Minister is also described.

The mining industry is a specific industry sector with well defined networks and means of representation and communication. Bearing this in mind the proposed approach is seen as likely to deliver adequate levels of consultation while involving appropriate stakeholders.

Review Report

A report for the attention of the Premier will be prepared from the Review. That report will cover both the analysis and consultation phases of the review together with outcomes of the consultative process.

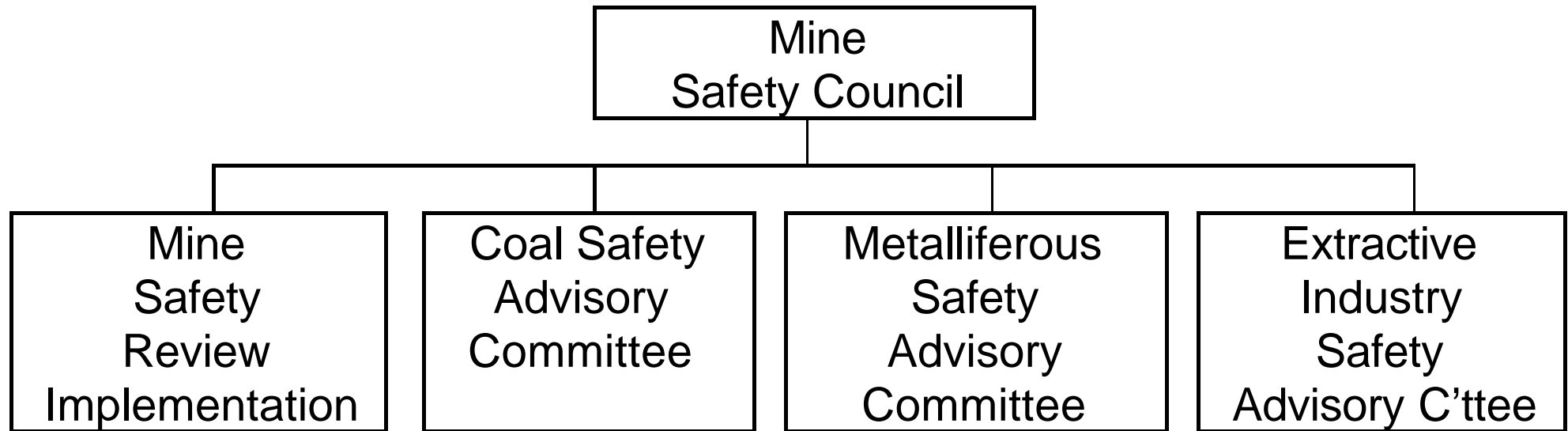
PROPOSED TREATMENT OF PROVISIONS WITHOUT COMPETITIVE IMPACT

Part:	Division:	Section(s):
Nature of Provisions:		
These provisions are considered primarily administrative in nature and do not impact on competition in the industry.		

PROPOSED TREATMENT OF PROVISIONS WITH COMPETITIVE IMPACT

Part:	Division:	Section(s):	
Nature of Provisions:			
Market Failure Addressed:			
Competitive Effect On:	Market Entry Barriers or Sanctions	Restriction on Competitive Behaviour	Unknown or unnecessarily High Costs
Personnel			
Companies / Operations			
Industry Sector			
Support Industries			
Mining Industry			
State			
Country			
Effect of Competitive Restriction:			
Costs:		Benefits:	
Alternative Means to Achieve Result:			

CONSULTATIVE PROCESS - PROPOSED ARRANGEMENTS



MINE SAFETY COUNCIL

ROLE - Report to Minister on Strategic Direction, Legislation, Regulation, Standards, Broad Industry Matters of Policy and Performance Measures. Move to Cross Industry and National Standards.