Attachment B
NSWMC Comments on Draft WHS (Mines) Regulation

Clause number	Title of clause and your comment or suggestion
Part 1 Preliminary	
3	**Definitions** **Contractor:** This definition is broad and potentially still includes contractors who are undertaking low risk work or who are not exposed to mining hazards. This definition is significant as there are consequential obligations arising from its scope. For example, the definition of contractor in subclause (b) should also exclude delivery personnel delivering fue and parts/equipment to storage areas at a mining operation. Such delivery personnel do not come into contact with hazards associated with mining operations and should not be covered by the broader contractor obligations in the Regulation. Further clarity and distinction between the concepts of contractor and supplier, for example, would assist here. **Emplacement area:** The definition of emplacement area requires clarification. **Face machine:** The current definition is coal mining specific and should include other equipment such as charge up equipment, ground support jumbos, face drilling jumbos etc that also work at the face. **Hazardous Zone:** check % - should be 1.25% **Hot Work:** align the definition with AS **Intrinsically Safe Circuit:** definition changed required as components are certified, not the circuit **Methane:** Methane is not the same as ethane and propane and does not post the same risks. These gases need to b separately defined. **Refuge Chamber:** Consider definition as the term is used extensively throughout Regulation **Shaft:** Concern has been expressed that the definition of shaft and the inclusion of the words ‘draft or horizontal shaft may include horizontal drives and roadways in some metalliferous mines. As it is currently drafted, the definition is not limited to shafts in which conveyances and winding systems are used. Consequently, the obligations involving shafts i

	the Regulation may have unintended consequences in relation to underground drives and roadways. It is suggested tl definition of shaft be amended to properly exclude underground drives and roadways. This may be done through referring to the purpose/activity relating to a shaft.
4	**Relationship with WHS Regulations** Clause 4 provides that the Regulation should be construed as part of the WHS Regulation. As such, it is presumed th Regulation will not be subordinate to the WHS Regulation and will sit 'side by side' with the WHS Regulation. This means the WHS Regulation and the Regulation must not be internally inconsistent. It is also presumed the Regulation is subordinate to the WHS Act and therefore, nothing in the Regulation (for exampl clause 14(1)(p)) cannot be used to circumvent legal professional privilege which is expressly protected by section 269 of the WHS Act.
5	**Meaning of Principal Mining Hazard** Concern has been expressed that the definition of principal mining hazard is more aligned with principal mining hazar in coal mining rather than metalliferous and extractive mining.
6	**Appointment of Mine Operator** Concern has been expressed that the provisions relating to mine operators do not clearly articulate the intent of the regulation that the mine operator may (and often will be) a corporate entity rather than a natural person. It is suggeste the Regulation includes a legislative note to clarify this.
8	**Regulator may direct that one or more mine operators be appointed** A direction by the Regulator under clause 8 has the potential to significantly impact on mining operations. Due to the significance of such a direction, it is suggested the Regulator be required to give reasons to the mine holder and provide a mechanism for a mine holder to respond to the Regulator in writing and address the Regulator's reasons before such direction takes effect.

Part 2 Managing risks	
Division 1	**General requirements**
Subdivision 1	**Control of Risks**
9	**Management of risks to health and safety** Clause 9(1): Although clause 9(1) refers to Part 3.1 of the WHS Regulation, concern has been raised that clause 9(1) does not clearly indicate that risks must be managed, so far as is reasonably practicable and in accordance with the hierarchy of controls. It is suggested that the inclusion of an expanded legislative note regarding Part 3.1 of the WHS Regulation may assist duty holders to better understand this clause and refer them to Part 3.1 of the WHS Regulation Clause 9(2): This clause refers to a risk assessment being undertaken by a competent person. It is understood the legislative intent of this provision is to require a risk assessment to be undertaken by a person who is competent to undertake a risk assessment in relation to the particular hazard being considered (rather than being competent with ri assessments in general). It is suggested the legislative intent of this provision be clarified. Clause 9(5): The requirement to keep records of all risk assessments and the competency of the person who conducted them is onerous. Risk assessments are continually undertaken at mining operations often when workers are on the job or about to commence a task. It is not reasonably practicable to require mine operators to keep records of all 'Take 5s' and similar personal risk assessments. Clause 9(5) should not apply to these types of risk assessments. Further there is no express limitation or time period on record retention. Clarification is sought on whether the 7 year retention period for mine records is also applicable to records retained under clause 9(5).
11 and 12	**Record of certain reviews of control measures- mine operator and other PCBUs** Clauses 11(2) and 12(2) require mine operators and PCBUs at mines to keep certain records following notifiable incidents or incidents referred to in clause 127 (e.g. high potential). It is proposed these records include the causes of the incident with key work health and safety issues and recommendations aimed at preventing a recurrence. NSWM opposes the inclusion of the additional 'non-core' requirements of clause 11(2). Further, the non-core additions at sub-clauses 11(2)(b) and 11(2)(c), directed at ensuring certain information is 'clearly noted', are not necessary. If the non-core additional provisions are retained, the requirement to keep records of the 'causes of the incident' in clause 11(2)(a) should refer to 'likely causes' given it is not always possible to confirm the exact causal factors of an incident (which often involves multiple causal factors). In addition, clarification of the Regulation language may be considered e.g. change "causes of the incident" to "factors likely to have contributed".

10	**Review of Control Measures** Clause 10(1)(d) imposes an obligation on a PCBU to review and as necessary revise control measures if an incident occurs that is required to be notified to the regulator under WHS laws. There are considerable notification requiremen under the Regulation and WHS (Mines) Act and it is noted that guidance material on these notification requirements would assist members with compliance. This is particularly important given the consequential obligations, such as those under clause 10(1)(d), that may be triggered by such incidents.
Subdivision 2	**Safety Management System**
13	**Duty to establish and implement** Clause 13(3) prevents a mine operator from conducting mine operations during any time which the safety manageme system is not established and implemented at the mine. It is understood the intention of this provision is to ensure safety management systems are in place for the particular activities proposed at the mine operation before those activities take place. However, safety management systems are constantly evolving and there will be time when minin operations need to continue though there are aspects of the safety management system that are under review or development. Clause 13 should still allow mine operations to continue where there is a safety management system in implementation for the activity being undertaken but other parts of the safety management system may still be under development.
14	**Content of safety management system** Clause 14(d) requires the safety management system to set out the management structure for the mine including arrangements for filling position vacancies, acting positions and competency requirements. In addition, clause 14(e) requires the organisational chart to show the positions: (i) within the management structure with work health and safet management responsibilities (including names of people - which should be interpreted as everyone in the organisatior and (ii) persons holding statutory positions. Concern has been raised by members that clause 14(e)(i) lacks clarity an it is potentially very broad- all workers at the mine have some responsibility for the management of work health and safety. It is not practicable (or necessary in the interests of safety) for a mine operator to document an entire organisational structure (including the names of position holders) in the safety management system. It is suggested clause 14(e) be limited to a requirement to document the statutory position holders only. Alternatively, the wording of clause 14(e)(i) should be clarified and limited to positions dedicated to work health and safety management (e.g. work health and safety managers/professionals).

	Clause 14(g)(i) also requires the safety management system to include a contractor's health and safety management plan prepared under clause 26. It will be difficult for mine operators to comply with clause 14(g)(i) in circumstances where contractors have failed to comply with clause 26. Concern has been raised by members regarding contractor engagement and the difficulty associated with getting contractors to develop and use their own safety management systems. This concern is particularly relevant to members with mine operations in remote locations where contractors are limited and are often very small PCBUs (that do not have sophisticated, documented work health and safety systems). The ability for contractors to work under the mine's safety management system must be a viable alternative
16	**Changes to safety management system** Clause 16(1) is a non-core inclusion in the Regulation and requires a mine operator to give notice to the regulator and industry safety and health representative before any change to the safety management system is implemented. It is n practicable for a mine operator to given written notice to the regulator and industry safety and health inspector before each and any change to the mine safety management system is implemented. This is an onerous requirement with nc direct safety benefit. It is understood the policy intent is that only significant or substantial changes to the safety management system need to be notified and the Department proposes to amend the Regulation to this effect. However even if the words significant or substantial are included, members have expressed concern that they will still be unsure as to when and how the obligation in clause 16(1) will be triggered. It is suggested the intent and language of clause 16(1) be clarified
20	**Duty on mine operator to provide information to contractor** This duty must be qualified by 'as far as is reasonably practicable'. This is essentially an extension of the obligation under the WHS Act, section 46, to consult, cooperate and coordinate activities with other duty holders the proper discharge of which would involve sharing information. Section 46 is a qualified duty and the same qualification should be included in clause 20.
Division 2	**Principle mining hazard management plans**
Subdivision 2	**Principal mining hazard management plans**
22	**Identification of principal mining hazards and conduct of risk assessments** This clause requires principal mining hazards to be identified and risk assessments conducted under clause 22(2). Clarification is sought on whether the requirement in clause 9(2) for risk assessments to be conducted by a competen person, applies to risk assessments under clause 22(2).

23	**Preparation of principal mining hazard management plans** Clause 23(3)(i) requires a mine operator to document, in a principal mining hazard management plan, the reasons for adopting or rejecting each control measure that is considered. Concern has been raised that it will not be possible to include this documentation for existing principal mining hazard management plans (or similar) where the relevant consideration was made some time ago and was not documented (or the record not retained). It will be impracticable, inappropriate (and potentially impossible) for mine operators to retrospectively document the information required in clause 23(3)(i). It is understood that clause 23(3) is not intended to require mine operators to retrospectively document information in principal mining hazard management plans. As such, it is suggested this provision be amended to include an exemption that the requirements under clause 23(3) do not apply assessments, consideration or analysis that took place before the commencement of the Regulation and was not documented/recorded at the time. Further, the consideration and analysis of control measures would need to factor in a consideration of what was reasonably practicable in the circumstances and this concept was not incorporated into WHS law in NSW until 2012. Transitional provisions will need to be included in the Regulation to allow mine operators sufficient time to update thei principal mining hazard management plan documentation. In general, clarification is also sought on the type of documentation required under clause 23(3)(i). For example, woul risk assessment records provide sufficient information to satisfy the requirement? Guidance material may be required to provide clear information on what clause 23(3)(i) is actually requiring in terms of document generation and the level of detail expected. Further, consideration should be given to the policy intent and practicalities of documenting every risk control rejected retained, guidance to enable operations to understand the policy intent is required.
24	**Review** Concern has been raised that the requirement of clause 24(2) to keep records of a revision of the principal mining hazard management plan is unnecessary. If a plan is revised, it follows that the revision will be documented and become the revised version of the principal mining hazard management plan. Further, this obligation is essentially captured in clause 11 which requires mine operators to keep records associated with a change in a risk control measure.

Division 3	Other plans
25	**Principal control plans** Principle control plans are already adopted by NSWMC members in their operations. However, principal control plans are sometimes referred to using different names such as management plans etc. It is understood the legislative intent of these provisions is to ensure mine operators have plans designed to address certain matters (e.g. mechanical engineering, health etc) and the name of the plan adopted by a mine operator, whether it be control plan or management plan, will not be determinative of whether a mine operator has breached the Regulation. It is suggested this policy intent be clarified in the Regulation. It is also noted Schedule 2 to the Regulation contains considerable prescription on the content of principal control plar It is suggested a transitional period of >18 months should be included to allow mine operators sufficient time to develo review and/or revise their systems as required by clause 25 and Schedule 2.
26	**Contractor health and safety management plan** This clause requires contractors, performing mining operations at a mine, to prepare a contractor health and safety management plan. This links with the requirement under clause 14(g) for contractor health and safety management plans to be incorporated to the mine safety management system. The meaning of mining operations in the context of this clause may require some clarification or guidance material. For example, it is generally understood that a cleanin contractor who cleans administrative offices at a mine will not be performing mining operations. However, a specialist cleaning contractor who cleans underground facilities may be performing mining operations. It is accepted the relevan consideration here is whether the work of the contractor is sufficiently connected to/associated with mining operations Though some members have raised the possibility this may not always be a straightforward assessment. Clause 26(5)(b) also requires the contractor to obtain written notification from the mine operator that the mine operato has reviewed the plan and it is consistent with the mine's safety management system. There is a very real risk contractors will use the written notice under clause 26(5)(b) as 'sign off' by the mine operator that the plan is adequate and will effectively control the risks associated with the contractor's work to the standard required by the mine operato There is also concern the written notice under clause 26(5)(b) will be relied on as evidence that the mine operator is controlling or influencing the contractor's work/workers which may or may not be the case. Concern has been raised by industry that although it is good practice to review contractor systems before they undertake work, the inclusion of clause 26(5)(b) as a legislative requirement is onerous and unnecessary. It also has

	potential to confuse the question of whether the contractor and/or the mine operator is controlling or influencing the contractor's work and to what extent. Some members have also noted the difficulty associated with getting contractors to develop and use their own safety management systems. This concern is particularly relevant to members with mine operations in remote locations where contractors are limited and are often very small PCBUs (that do not have sophisticated, documented work heal and safety systems). In these, and other circumstances, contractors will sometimes adopt or model their systems on the mine operators'. The NSWMC accepts the Regulations need to deal with the contractor/mine operator relationship. However, the Regulation should not seek to prescribe how a mine operator must manage safety when it comes to the contractor's work. The appropriate relationship between a contractor's systems of work and the mine operator's systems is very much informed by the context and the level of risk associated with the contractor's work. For example, a labour hire provider, who is supplying labour to work in and among the mine operator's workforce should be reviewing and adopti the mines safety management system as the mine operator will likely be influencing and directing the labour hire worker's work. However, a specialist contractor who is contracted to undertake work the mine operator has no expertise in, will need to have its own specialised safety management systems. The mine operator may review the contractor's system but in this context, may, rightfully, need to rely on the expertise of the contractor to ensure the health/safety matters will be properly managed. It is suggested that the development and implementation of a contractor health and safety management plan and the additional obligations under clause 26 should be triggered by a risk based approach that would allow contractors to develop systems and plans appropriate for the risk profile of the work they are undertaking.
Division 4	**Specific control measures- all mines**
Subdivision 1	**Operational Controls**
27	**Communication between outgoing and incoming shifts** Clause 27(b) requires the communication system to ensure the supervisor of an outgoing shift to sign the requisite report. Clause 27(d) also requires the incoming shift supervisor to sign the report. Given the prevalence of electronic communications (and the increased use of electronic communications and record keeping at mining operations) concern has been raised about whether the requirement to physically sign a report is incompatible with computerised shift reporting. It is noted that the legislative intent of clause 27(b) and (d) is to ensure there is a system requiring the outgoing/incoming supervisors to provide acknowledgement he or she has personally

	prepared, read and/or communicated the report rather than a requirement to physically sign it. It is suggested clause 27(b) and (d) be amended to incorporate some acknowledgement that the report can be signed electronically or that some other form of electronic acknowledgement may be used to confirm authorship of the report. In relation to clause 27 and clause 131 the requirement to retain shift handover communications for 7 years is an unnecessary administrative burden. Retention of such records for 2 years is more appropriate.
29	**Operation of belt conveyors** Clause 29 contains a considerable amount of prescription that is better suited in a Code of Practice. Further, although clause 29(1) links to clause 9- which in turn links to Part 3.1 of the WHS Regulation (which is a requirement to manag risks 'as far as is reasonably practicable'- the risk controls specified in clause 29(2) are not qualified. Clause 29(2)(b) - do the accessories have to be in contact with conveyor? does this mean all accessories must be Grade S? Clause 29(2)(d) prescribes an 8 hour time frame for the routine inspection of belt conveyors. The stipulation of this timeframe is unnecessary and does not align with alternative shift arrangements or a risk based approach. It is suggested clause 29(2)(d) be amended to require inspection on a regular and routine basis with inspection intervals t be determined by the mine operator based on risk or maintenance standards. There are some additional metalliferous specific requirements and practicalities that need to be considered. In the alternative it is suggested clause 29(2)(d) address the inspection requirement with reference to the minimum number of expected inspections per day (e.g. 24 hour period) rather than setting 8 hourly intervals. The language of clause 29(2)(d)(ii) is unclear. Is the intent of clause 29(2)(d)(ii) to require inspections when a conveyo is shut down because of overheating, smouldering or other condition likely to cause fire? If so, the language of this clause should be amended to reflect this. In addition, what is the definition of competent person here?
30	**Ground or strata failure** Clause 30(2) imposes an obligation on mine operators to regularly monitor all areas at or around the mine where controls are in place for ground/strata failure. Members have raised concern about whether it is necessary to regularl monitor all areas at or around the mine regardless of whether persons regularly work in those areas. Monitoring of areas where people are not working should be based on risk. It is submitted that clause 30(2) should not impose a

	requirement to regularly monitor all areas where people may not be working. Further, clarification is sought on whethe monitoring means the physical inspection of those areas or whether other forms of monitoring can be implemented. This duty should also be qualified by 'so far as is reasonably practicable'.
31	**Seismic activity** It is understood the intent of this provision is to set out requirements for managing risks associated with seismic activit at a mine, where the risk of seismic activity has been identified for that particular mine. It is noted clause 31(1) refers t clause 9, which in turn cross references Part 3.1 of the WHS Regulation. However it is not clear on the language of clause 31(1) and (2) whether these provisions only apply where a risk of seismic activity has been identified. It is also noted that risk controls stipulated in clause 30(2)(b), (e) and (g) are not qualified by 'as far as is reasonably practicable'. This is particularly problematic for mines where there is no material risk of seismic activity. Further, there is concern the requirement in clause 31(2)(e) may be reasonably practicable for mines where the risk of seismic activity is low and the ground support system is already installed and in place. While it is accepted mine operators should undertake monitoring of seismic activity, it is suggested clause 31 be amended to clarify that the obligations set out in same are subject to the degree of risk of seismic activity at a particul mine and what is 'reasonably practicable' in the circumstances. Subsequently, to establish the baseline and risk control methodology may require a significant transitional period for some sectors of the industry.
32	**Explosives and explosive precursors** Clause 32(2)(a)(i) provides that in managing risks to health and safety at a mine associated with explosives/explosive precursors the mine operator must ensure the explosives/explosive precursors are 'stable'. Concern has been raised about the use of the word 'stable' and what this actually means given the intent of the provision appears to require the mine operator to ensure the explosives/explosive precursors are safe to handle. It is also submitted that all the obligations in clause 32(2) should also be qualified by 'as far as is reasonably practicable'. For example, there are aspects of clause 32(2) that will require strict compliance by workers in order for the mine operator to fulfil its obligations. Clause 32(2)(b) requires mine operators to ensure any dealing with an explosive/explosive precursor is compliant with the applicable Australian Standard. Aside from implementing and monitoring (and enforcing) compliance with systems aligned with Australian Standards, mine operator should not have

	an absolute duty to ensure the outcome contemplated in clause 32(2)(b). Does 32(2)(cv) apply to all mines or just coal?
33	**Electrical Safety** Clause 33(2) imposes a series of obligations for managing risks associated with electricity at the mine. These obligations are prescriptive and drafted in absolute terms. Of note the mine operator must ensure: ● Under clause 33(2)(l)(ii) that the electricity supply to all electrical plant in an underground mine, and all mobile transportable plant fed via flexible reeling or trailing cables in any other mine, is designed so that the magnitud of earth fault currents to the plant is limited (in order to control step and touch potentials); and ● Under clause 33(2)(o) that earth leakage protection is provided on all circuits (including sub-circuits) other than circuits that are isolated from earth. Concern has been raised that the requirements of clause 33(2), and the above mentioned requirements in particular, are onerous and could impose a disproportionate cost on business. Further, clarification is sought on whether clause 33(2)(o) requires existing distribution board circuits to be fitted with individual protection. Communication on the policy intent of 33(2) in total is also required. 33(2) (f) may result in complicated and overly complex electrical diagrams defeating their intent. Suggest deleting item (iii) and (vi) as they are duplicative of other regulatory requirements.
34	**Notification of high risk activities** In general, NSWMC is supportive of the requirement for providing notification of high risk activities when compared wi the approval scheme currently applicable to coal mining in NSW. However, it is noted that while the notification for high risk activities (rather than pre-approval from the regulator) is a positive change for the coal mining sector, the notification obligations are new regulatory requirements for the non-coa mining sector. It is also noted that the risk profile for certain activities in the coal mining sector is often different (and lower risk) for the same activities in the non-coal sector. Concern has already been raised by members that the proposed notification system, while facilitating regulatory surveillance of mining activities, does not necessarily have direct safety benefits. In relation to the particular notification requirements, it is noted:

	● Schedule 3, item 2 Emplacement areas: There is some concern about the definition of emplacement area in th context of operations in the non-coal mining sector. As such, it is unclear whether the notification requirement for the establishment of an emplacement area is necessary and appropriate for some non-coal mining operations. For example, opal mines. ● Schedule 3, item 3 Electrical work on energised electrical equipment: Notification should not be required for 'te for dead' work on electrical equipment. Such a requirement would be onerous and unnecessary in view of the risk profile for 'test for dead' tasks. ● Schedule 3, item 5 Working in an inrush control zone. The description of inrush control zone in clause 46(2) of the Regulation does not necessarily align with control zones used in metalliferous mines. In addition classification of working within the inrush control zone as a high risk activity does not necessarily align with the risk profile for such work in metalliferous mines. For example, there may be times when mining of an inrush area is an effective way to control the inrush risk. The entire clause needs to be rewritten to ensure it either clearly applies to all mines or specifically communicates the mine type (see earlier comments on confusion of Regulation).
35	**Prohibited uses** Clause 35 should include a subclause imposing an obligation on workers to ensure the items listed in Schedule 4 are not used by the worker at the mine. Further, there should be a positive obligation on workers to report a breach of clause 35 to the mine operator.
37	**Minimum age to work in mine** It is understood the intent of clause 37 is to align the Regulation with the requirements of the applicable ILO conventio on the minimum age for workers in an underground mine. NSWMC accepts that international law sets a minimum age for work in an underground mine. However the obligation to provide direct- 'line of sight'- supervision for workers unde the age of 18 under clause 37(1)(b) does not reflect any express requirement under international law. Further, clause 37(1)(b) imposes a requirement that may be unnecessary and impracticable in terms of compliance. For example, a breach may arise if a worker is supervising an apprentice who is undertaking low risk work and is close by but out of the supervisor's line of sight. Alternatively, a breach may arise if an apprentice is permitted to drive to a job in an underground mine unsupervised. It is suggested clause 37 be amended to refer to appropriate supervision- which is t language adopted in ILO conventions on minimum age for work.

38	**Inspection plan** While NSWMC accepts that regular and routine inspection of mining operations is an important aspect of managing work health and safety risks, concern has been raised that the requirements of clause 38(2) are too prescriptive. For example, the requirement for the inspection plan to specify the number of competent persons to conduct each inspection is onerous and does not have any direct safety benefit (see clause 38(2)(d). Guidance and discussion on th policy intent and application is required.
Subdivision 2	**Air Quality and monitoring**
39	**Temperature and moisture content of air** Clause 39(b)(ii) requires a mine operator to manage heat stress where persons work or travel and the wet bulb temperature exceeds 27 degrees Celsius. Some members do not implement heat stress controls until the temperature reaches 29.9 degrees Celsius and these approaches have been developed in accordance with external guidelines (DOCEP) and information.
40	**Ensuring exposure standards for dust not exceeded** Clause 40(1) appears to require a mine operator to ensure no person is exposed to specified atmospheric concentrations of airborne dust notwithstanding the possibility that persons may use PPE which would prevent actual exposure or mitigate it. Clarification is sought on whether clause 40(1) is referring to exposure to airborne concentrations with or without the use of PPE. It is suggested this clause focus on personal exposure and be reworde to clarify any confusion about the intent of the provision. Concern has also been raised about potential inconsistency between Safe Work Australia Workplace Exposure Standards and clause 40(1). For example the exposure standard for pure coal dust (<5% quartz) is 3mg/cubic metre (TWA) compared with 2.5mg/cubic metre in clause 40(1)(a). This has the potential to cause confusion. It is noted clause 40(1)(a) potentially requires a 50% reduction in airborne contaminants compared with what some non-coal mining operations are currently measuring. As such, compliance with clause 40(1)(a) poses a considerable regulatory burden on some operations which may be difficult to comply with.

41	**Monitoring exposure to airborne dust** Clause 41 effectively deems the concentrations specified in clause 40(1)(a) and (b) as exposure standards under clause 50 of the WHS Regulation. Although as drafted it is extremely confusing. It is suggested it is not necessary as the relevant exposure standards already deal with appropriate levels of exposure to airborne contaminants.
42	**Air monitoring- use of devices** Concern has been raised about the requirement in clause 42 for mine operators to ensure the suitability and effectiveness of air monitoring devices given some mine operators use external providers to undertake air monitoring. is suggest this provision be amended to apply to mine operators where the devices are within the mine operator's ownership/control and for a comparable duty to be imposed on PCBUs who undertake air monitoring at mining operations.
43	**Air monitoring- signage** Concern has been raised about the reasonable practicability of clause 43. The term air monitoring device can cover a wide range of equipment configurations and designs. Given the range of information that would need to be covered to achieve compliance with clause 43 there is a real possibility that signage is not the appropriate way to communicate such information. Clarification is sought on the level of detail in the signage contemplated by clause 43. Comparable duties may also be appropriate for PCBUs supplying and using such equipment at a mine.
Subdivision 3	**Fitness for Work** It is noted Subdivision 3 does not include any provisions for mine operators to assess or address physical unfitness o psychological impairment of workers. Mine operators frequently need to manage risks associated with physical unfitness and psychological impairment of workers that pose additional risks to the worker and others at the mine operation. NSWMC members have suggested that provisions dealing with this type of work health and safety risk wou assist in managing the impact of such matters in the workplace. Such provisions may include, for example, requiring workers to provide relevant information to mine operators (where there is a potential risk to health and safety of the workers and others at work) and co-operate with any requirements of the mine operator to manage risks associated with the physical unfitness and psychological impairment of the worker.

44 and 45	Effective management of risks associated with fatigue and drug/alcohol consumption requires cooperation and compliance from workers. Clauses 44 and 45 do not contain any positive obligations on workers in respect of these matters. It is suggested such obligations be included in clauses 44 and 45. In relation to procedures and systems for the management of risks associated with fatigue and drug/alcohol consumption, NSWMC considers the development and implementation of these procedures/systems should ultimately be determined by mine operators and should not be prescribed by the Regulation or require agreement with workers/worker representatives. It is the mine operator who bears the overarching responsibilities in terms of work health and safety at a mine and the mine operator should be able to determine how this is done. It is noted that the consultation obligations under the Regulation will already allow for worker input into the management of work health a safety risks and these provisions provide adequate scope for worker involvement in fatigue and drug/alcohol related procedures and systems.
Division 5	**Specific control measures- underground mines**
Subdivision 1	**All underground mines – operational controls**
46	**Inrush** Clause 46 contains considerable detail on how mine operators must manage risks associated with inrush. Concern has been raised that the requirements of clause 46 are prescriptive and do not allow a mine operator to apply a flexibl risk based approach to managing inrush - especially given the large range of mine types being covered by the regulation. Such flexibility is important considering the different characteristics of coal and non-coal mining operations and how risks associated with inrush are managed differently. For example, in relation to clause 46(2) the description inrush control zones, and reliance on distances from the inrush hazard, does not necessarily align with how inrush control zones are described and used in metals mines. In some metals mines, the safe area of work is in close proximity to the inrush hazard and mining is used to control the risk It is suggested clause 46(2) be reworded to provide flexibility for the inrush control zone to be defined without reliance on certain distances and consideration of coal v non-coal also be adequately provisioned.
47	**Connecting workings** Concern has been raised about the practicality of clause 47(2) particularly in relation to mine workings where it is not possible to safely gain access. Further, clause 47(2) is an absolute duty and does not provide mine operators with flexibility to adopt other reasonably practicable methods based on risk or undertake ‘protective’ drilling to prove inaccessible workings. Alternatives must be available to mine operators.

	It is suggested the language of clause 46(6)(b) be incorporated into clause 47 to account for circumstances where saf access is not possible and other exploratory or inspection methods may be used to identify and assess risks associated with connecting workings.
48	**Winding Systems** Concern has been raised that clause 48 sets out requirements for winding systems to have certain characteristics which can be managed through a plant registration and plant design registration process. It is suggested the 'non-core content proposed in clause 48 be removed as this can be addressed outside the scope of the Regulation or in the context of plant and plant design registration process. Concern has also been raised about the ability for mine operators to comply with clause 48(1)(h)(ii). Some members have attempted to implement such communication systems with the surface but the technology currently available does not provide for this outcome. It is suggested clause 48(1)(h)(ii) be removed.
49	**Ropes** Concern has been raised about the ability for mine operators to comply with clause 49(2)(a). In order to achieve compliance, ropes will need to be purchased from an approved supplier. It is understood that currently, there are no alternative testing agencies available to test the ropes in compliance with clause 49(2). This makes compliance with clause 49(2)(a) impracticable and potentially impossible. It is suggested the content in clause 49 be amended to include achievable obligations that recognise current industry limitations in this area.
50	**Operation of shafts conveyances** As indicated above, concern has been expressed that the definition of shaft and the inclusion of the words 'draft or horizontal shaft' may include horizontal drives and roadways in some metalliferous mines. Clarification of the definition of 'shaft' to deal with shafts with a conveyance as distinct from underground roadways- which appears to be the intent is suggested.
53	**Ground and strata support** Clause 53, as it is currently drafted, doesn't appear to allow entry into an area without support, even after a risk assessment has indicated it is safe to enter. It also doesn't appear to allow entry into an area without support in an

	emergency situation. This means clause 53 may prevent access to areas that are unsupported but historically, have been safe. This also means that entry into an unsupported area using an underground machine with inbuilt support would not be permissible. Although clause 53 refers to clause 9, it is not clear given the wording of clause 53 whether the obligations are qualifie by what is reasonably practicable and do not apply when it is safe to enter an unsupported area.
54	**Exhaust emissions and fuel standards** Concern has been raised that some fuel currently used by members does not comply with the standards prescribed ir clause 54(1). It is understood there currently is no maximum exposure levels for DPM because of lack of scientific support for a specific figure. As such the justification for including the figures in clause 54(1) is unclear. Concern has also been raised that the sampling and analysis requirements associated with licensing are onerous. Some members currently undertake sampling and analysis themselves and to impose a requirement for this to be done under a licence has the potential to unnecessarily increase costs.
54(3)	**Fuel standards** Concern expressed from some operators with current in service machines require use of alternate fuels in order to meet the requirement for emissions to be as low as is reasonably practicable. Mines already have a Federal Exemptic for Eromanga. How will this be handled?
Subdivision 2	**All underground mines – air quality and ventilation** It is noted that a significant number of non-core provisions proposed in Subdivision 2 appear derived from or aligned with coal mining operations and practices. General concern has been raised by members in the non-coal sector that some of these provisions are either impracticable or not necessary for non-coal mines due to the significant difference in risk profile when it comes to air quality and ventilation in underground mines. It is suggested this subdivision be reviewed to identify coal specific provisions and for these provisions to be moved to Subdivision 3.
55(1)	**Air Quality - airborne contaminants** This sub-clause should refer to accessible places where people work or travel, as written it could be taken to include goaf and sealed areas.

56	**Air Quality – minimum standards for ventilated air** The language of clause 56(1)(c) requires a mine operator to ensure the ventilation system ensures the general body o air has a concentration of diesel emissions (including diesel particulates and any other harmful emissions from the diesel engine system) is as low as reasonably practicable. Concern has been raised that the use of the term 'any othe harmful emissions' imports a requirement to manage emissions that are not known or not known to be harmful. This imposes a duty on mine operators that is undefined and unachievable. It is suggested this clause be amended to refe to other known harmful emissions. Clarity is also sought regarding the term 'general body' of air and how this might be better defined for consistency of interpretation.
58	**Requirements if air quality and air safety standards not met** Clause 5(b)(ii) refers to a requirement to notify the statutory position of ventilation officer of certain matters. The positi of ventilation officer is only required for coal mining operations under this Regulation. As such, mine operators in the non-coal sector may not be able to comply with this requirement. It is suggested this requirement be amended to only apply to coal mining operations. Is real-time monitoring really intended? See comment on Ventilation Officer in Statuto Positions discussion - assumed for all mines but not listed in non-coal operations.
60	**Ventilation system - further requirements** Clause 60(2)(a) consider clarifying terminology for controlled and uncontrolled circulation - as may be interpreted in many ways. Clause 60(2)(e) requires a mine operator to ensure any ventilation fan installed at the surface will not be damaged by explosion in an underground mine. Concern has been raised that it is not possible to ensure this outcome in the event of an explosion. It is suggested this clause be amended to include the qualification of 'as far as is reasonably practicable'. Has adequate consideration of non-coal fan installations been considered? Clause 60(3) also refers to a requirement to ensure average air velocity of 0.3 metres per second. This measurement is different to what is currently applied in NSW (for coal mines) which uses a per cubic metre measurement. It is understood this requirement is derived from Queensland legislation. It is suggested this clause be amended to align with current NSW practices.

	In the alternative transitional arrangements for compliance with this clause should be extended to 2 years. Clause 60(4) requires mine operators to ensure certain average air volumes where there are one or more diesel engines 'in operation' in the case of an underground mine. The wording of this clause is potentially ambiguous as it is not clear whether it only refers to diesel engines operating underground (which is presumed to be the case) and/or whether 'in operation' means 'switched on'. In the non-coal sector, there are times when diesel engines will be located underground but are not being used so are not producing any emissions. Also, it is possible to have a diesel engine operating in an exhaust way and not affecting anyone with its emissions (i.e. not in the head). Also in the non-coal sector, concern has been raised that sometimes mine operators will reuse air in the ventilation system and the kilowat rating in clause 60(4)(b) would not necessarily permit that practice to continue. Ventilation should be, and is, based on air quality not engine output. It is suggested this clause be amended to clarify its intent and to permit current practices to continue.
61	**Monitoring and testing of ventilation system** In the context of non-coal operations, there are times when ventilation fans in underground mines stop but no alarm is sounded because natural airflow can still be used in non-coal underground mines. It is understood this clause is derived from coal mining requirements and should be moved to Subdivision 3.
62	**Modelling to take place before changes to ventilation system** This clause, as it is currently drafted does not account for the possibility that modelling of a ventilation system may demonstrate a change could result in a minimal increase to health and safety and that the overall risk was still acceptably low. Further it does not account for the possibility that a ventilation system may need to be changed in the case of an emergency and there is no time to undertake modelling. It is suggested this clause be amended to allow changes to be implemented so long as the risk to health and safety remains as low as is reasonably practicable and changes may be implemented without modelling in certain circumstances. Consistent with NSWMC's submission on clause 16(1), concern has been raised that the use of the term 'significant change' again lacks specificity and requires clarification. In general the requirement to conduct modelling is also addressed in clause 63(3)(o) as mandated content for the ventilation control plan. It is suggested that the requirement in clause 63(3)(o) is sufficient and clause 62 can be removed.

63	**Duty to prepare ventilation control plan** It is noted clause 63(3)(o) requires the ventilation control plan to include a description of the modelling of ventilation processes when a significant change is made to ventilation arrangements. It is suggested the requirement to include this in the ventilation control plan is sufficient and clause 62 can be removed. However, the comments regarding the term 'significant change' above are also applicable to this clause and require clarification. Clause 63(3)(j) requires the ventilation control plan to specify how close ventilation ducting and brattice lines must be any face. This is highly prescriptive content and should be included in a Code of Practice. Clause 63(3)(e) requires the ventilation control plan to include arrangements for an alternative and independent way o operating the main ventilation fans in the event of a loss of power supply. Coal and non-coal sector members have noted that not all mines have backup power supplies and in most cases, if the power supply is lost, workers will be withdrawn from the mine. As such, the decision to continue to operate the fans is a business one rather than a safety one. Because the main response to a loss of power to ventilation plan is the withdrawal of workers from the mine, ther may not always be alternative power sources available. Clarification is sought on whether clause 63(3)(e) actually requires a mine operator to have an alternative power source available for ventilation fans or whether a process to withdraw workers from the mine in the context of loss of power to the fans will satisfy clause 63(3)(e). In the alternativ it is suggested the words, 'if available' be included at the beginning of clause 63(3)(e). Clauses 73 to 86 contain considerable detail- member comments on technical matters?
65	**Ventilation Plan** Clause 65(3) sets a minimum requirement for ventilation requirements to be reviewed and revised at least monthly. This is an onerous requirement and does not allow reviews and revisions to take place on an as needs (risk based) basis depending on the nature of each mining operation. Some mines do not undertake monthly reviews because it is not necessary given the risk profile of the mine e.g. block cave does not change its vent plan. It is suggested this clau be amended to allow review of the ventilation plan to be based on risk and revision to occur as necessary.
Subdivision 3	**Underground Coal Mines**
	There is considerable detail included in this subdivision that prescribes minimum risk control requirements for underground coal mines. While much of the content deals with appropriate risk controls, it is suggested this level of detail is more appropriate content for a Code of Practice.

	In particular, mines sometimes use various analysis methods to develop and monitor the effectiveness of risk control measures. As such, provisions requiring certain sampling and analysis methods to be adopted, for example clause 66(4) and (5) should not be included in a Code of Practice. Further, the content of clauses 68 Subsidence and 69 Sealing are highly prescriptive. It is noted that although these clauses require risks to be managed in accordance with clause 9 (as far as is reasonably practicable), they then include numerous absolute requirements which must be complied with. This is inconsistent with the overarching approach to risk management adopted in the model laws and does not allow mine operators to develop and implemer more effective and innovative risk control measures.
66	**Coal dust explosion** Concern has been raised about whether the definition of return roadway mean that air intakes become returns (clause 66(6)). It is suggested the definition of return roadway be narrowed to refer to 'hazardous' mine workings. Clause 66(4)(c) is highly prescriptive and requires mine operators to carry out sampling more frequently than is currently adopted. It is suggested clause 66(4)(c) be removed from the Regulation and included in a Code of Practice
66(3)(a)	**Coal Dust Explosion** This implies ALL strip samples require "laboratory analysis for incombustible content" at accredited laboratory, howev the Draft CoP allows colorimetric determination of incombustible content by the mine roadway dust sampler. Need to clarify sampling that needs laboratory analysis and continue use of color comparison for bulk of samples. Laboratory analysis of all samples would add significant cost without any increase in safety benefit.
69	**Sealing** Clause 69(2)(h) requires a mine operator to undertake modelling on a 12 monthly basis to 'ensure that the inertisation locations to be used at the mine are located effectively'. Concern has been raised that a mine operator may not be aware of all inertisation locations in order to comply with this clause. At times, inertisation locations are not able to be identified until an event occurs. Suggest clause 69(2)(h) be amended to account for the possibility that it may not be possible to know/identify all inertisation locations.

72	**Ventilation** Concern has been raised about clause 72(2)(d) and in particular subclause (ii) which requires a mine operator to ensure certain things occur of the minimum quantity specified in the ventilation control plan is not supplied at any time to any part of the mine. Clause 72(2)(e) requires a mine operator to ensure: *the minimum quantity of air flowing in any ventilation split at the mine is the sum of the open circuit capacity of each auxiliary fan in operation in the ventilation split and 30% of the open circuit capacity of the largest auxiliary fan in operation in the ventilation split* It is noted that ensuring 30% of the open circuit capacity of the largest auxiliary fan will not necessarily fix all forms of recirculation – it only prevents one form of recirculation.
77	**Post incident monitoring** Concern has been raised about how a mine operator may conduct post incident monitoring that will comply with the requirements of clause 77. It is understood the intent behind this clause is to require mine operators to attempt to design monitoring systems that can withstand further incidents. However, it is still possible such systems may not withstand further incidents. In addition, this clause should be subject to an exemption where it is not possible to undertake post incident monitoring in emergency circumstances when the primary objective is the safety of workers.
Subdivision 4	**All coal mines** This subdivision is located under Division 5- Specific control measures- underground mines yet the requirements in clause 85 Inspection program and 86 Sampling and analysis of airborne dust relate to all coal mines. This has potenti to cause confusion. It is suggested clauses 85 and 86 be moved to another division in the Regulation or Subdivision 4 becomes a Division in and of itself.
85	**Inspection program** Clause 85 contains considerable detail on how coal mines must conduct inspections of the mining operations. In relation to clause 85, the following points are noted: ● (3)(e)(ii): Specifically refers to withdrawing people from underground mines but the same principles could also apply to open cut coal mines.

	● (5)(a) and (b): Imposes 8 hourly inspection requirements for all places where people work, 24 hourly inspectio for roadways and 7 day inspections for other safely accessible places. While it is accepted there is a need to conduct regular inspections, it is submitted these inspections should be based on risk and the outcome of a ris assessments. If the policy intent for the 8 hourly inspection is to align with shift patterns, the current drafting does not accommodate alternative shift pattern arrangements (e.g. 12 hour/8 hour shifts). ● (11): Imposes a requirement to allow workers to inspect their 'place of work' prior to commencing work. NSWMC members support this requirement but note the current drafting suggests workers should be allowed to inspect their entire 'place of work' which could include the whole mine. It is understood the policy intent of th provision is to allow workers to inspect the immediate area where they are about to undertake work to identify hazards and assess risks etc. It is suggested the language of this clause refer to workers being allow to inspec the places, areas or locations where they will work than use the term 'place of work'.
Division 6	**Emergency management**
Subdivision 1	**Emergency Plans for All Mines**
87	**Duty to prepare emergency plan** Clause 87(2) prescribes certain requirements for emergency management plans. In relation to clause 87(2) the following points are noted: ● 2)(a)(i): Imposes a requirement to have a system for the accurate location of all persons. Concern has been raised that the word 'accurate' requires exact locations to be identified which could only be achieved through electronic tagging/GPS monitoring. It is understood the policy position is that current systems, such as tag books and permit to work systems will be sufficient. ● (2)(a)(vi): Refers to appropriate transportation of persons at risk to a place of safety. The use of the word transportation implies some form of vehicular transportation is required. In many cases the quickest and safest means for persons to get to a place of safety is to walk. It is suggested the language of clause 2(a)(vi) be amended to reflect this possibility. ● (2)(a)(vii): The requirement in this clause appears to be directed towards coal mining operations. Emergency sealing of underground mines is important for underground coal mining operations but may not necessarily be required for non-coal mining operations due to the different risk profile. It is suggested this clause be amended to reflect the possibility that emergency sealing may not be necessary for non-coal underground mines.

88	**Consultation in preparation of emergency plan** In relation to clause 88(1)(b) it is noted that the non-coal mining sector is not serviced by the NSW Mines Rescue Brigade.
93	**Review** Clause 93 imposes the requirements for reviewing and if necessary revising the emergency plan. This includes a review of worker training and testing of the plan. Concern has been raised that a 12 monthly review may be onerous particularly if it requires worker consultation under clause 120. It is noted the requirements of clause 93 are based on emergency response studies which suggest the 12 monthly reviews are needed. Further, on the language of clause 93(1) a 12 monthly review will still be needed even if a review is undertaken 2 months prior due to a significant chang in mining operations. In addition there is no scope or flexibility in clause 93 to accommodate what is reasonable practicable based on the ris profile of a mine. It is suggested clause 93 be amended to include such flexibility and to exempt a mine operation from second review in a 12 month period if a review has already been undertaken due to a significant change in operations that same 12 months. NSWMC also repeats it submission on the term 'significant change'.
94	**Training of workers** Clause 94 should only require mine operators to provide training to workers on the relevant parts of an emergency pla The training is less likely to be effective if workers are required to undergo training on parts of the plan that are not relevant to them.
Subdivision 2	**Underground Mines**
95	**Emergency exits** Clause 95 deals with requirements for emergency exits. In relation to clause 95, the following is noted: ● (1) (2) and (5): It may be impossible for some mines to comply with the exit requirements stipulated in clause 95(1) and (5). Consideration should be given to the operating requirements of mines such as Tallawang where the requirements under clause 95(1) and (5) are not currently in place. Clause 95(5) only allows for single exit mines in two circumstances. Current drafting prohibits stoping such as long

	hole retreat stoping from a stope that is more than 250 metres from the mine entrance for a single entry drive. At some mining operations the development hearing is more than 250 metres with a rescue chamber at 750 metres. Clause 95 should include a qualification of 'as far as is reasonably practicable' given previous legislative requirements and existing mine designs. It is also noted there are no transitional periods proposed for these requirements and some mines will need to undergo significant change (which may take considerable time) in order to achieve compliance. ● (2) is this coal specific or all underground mines - not practicable in all situations ● (4)(a) Requires at least one exit to be an intake airway or a combination of adjacent intake airways. Thi requirement is not necessary for non-coal underground mines and should be limited to underground co mines. In addition, for larger older coal mines may also be impractical and very expensive. ● (4)(c): Requires at least one exit to be separated, as far as is reasonably practicable, from all other roadways. It also specifies certain requirements for the separation. In the non-coal sector most refuges are open and directly off the main roadway and this means existing arrangements do not comply with clause 4(c). Concern has been raised that compliance with this requirement may be impossible for some mines. It is suggested this requirement be removed and be included by way of recommendation i a Code of Practice. ● (4)(d): Concern has been raised as to whether it is necessary to have vehicular access for all underground mines when it is still possible to safely withdraw people from the mine without it. It is suggested this requirement be removed and included in a Code of Practice. ● (6)(b): Clarification is sought on what is meant by fire fighting equipment in this clause and the types of equipment contemplated by the requirement. (It is noted such clarification may be included in a Code o Practice rather than the Regulation itself).
96	**Safe escape and refuge** Clause 96(2)-(7) sets out detailed requirements for safe escape and refuges in underground mines. It is suggested much of the content included in clause 96 should be included in a Code of Practice rather than the Regulation. In addition, the following is noted: ● (2)(c): The reference to mobile plant in clause 96(2)(c) should be removed. ● (3): The requirement to have backup power supply for communication systems should be limited to critical par of the communication system. Requiring backup power for an entire communication system is impracticable and need only apply to the parts of the communication system that are necessary to communicate emergency response information to people and workers in the event of an emergency. ● (6)(e): It is noted the issue of rehydration in an emergency situation in an underground mine is important. However implementing procedures for rehydration in an irrespirable environment is very difficult. It may be

	impracticable to provide rehydration procedures in respirable change over stations. This approach should be acceptable under clause 6(e) which should not require mine operators to develop and/or adopt impracticable rehydration procedures. ● (6)(f): This clause should refer to a 'respirable air' change over station. ● (6)(g): This requirement appears to impose a limitation on 'hot seat' shift change over arrangements which inevitably result in more people being present in certain areas for certain period. It is suggested this clause include an exemption or note acknowledging that 'hot seat' shift change overs are still permissible. ● (7) consider changing terminology from food to sufficient provision to maintain life during the refuge chambers occupancy in emergencies.
99	**Self-rescuers** The issue of self-rescuers was subject to considerable discussion by members with most raising concern about the expense of self-contained self-rescuers (including acquisition and maintenance). In clause 99(1) the reference to providing self-contained self-rescuers in irrespirable atmospheres appears to infer irrespirable means low oxygen and this is not necessarily always the case (an atmosphere may be irrespirable due to range of factors including the presence of airborne contaminants and, but not always, low oxygen levels). It is noted th some operations do not currently provide self-contained self-rescuers to all persons who work underground. Some operations still use particulate filters without oxygen self-rescuers- which is appropriate based on the risk profile for those mines (and the decision has been based on a risk assessment). Transitional arrangements for compliance with clause 99 will need to be longer than 12 months and up to 3 years to give mine operators enough time to work towards compliance. Further, clause 99 should include flexibility for particula filters to be used where this is supported by a risk assessment or approval has been given by an inspector. In relation to clause 99(3), it is acknowledged that training on the use of self-contained self-rescuers is important but v bring significant cost imposts on organisations. Consideration should be given to the policy intent and various ways th may be achieved practically. Clause 99(2) must be qualified by what is reasonably practicable in the circumstances.
101	**Competent person at surface** Clause 101 refers to a requirement to ensure there is a competent person at a mine's surface who can be contacted by a person underground and can answer alarms and cut/restore power. Compliance with clause 101 relies, to an extent, on the person above ground to remain readily available to be contacted. This may not always occur for reason

	outside the mine operator's control. For example, the delegated persons' neglect of duty or a medical emergency. It is suggested clause 101 be qualified by 'as far as is reasonably practicable'. Concern has also been raised about the necessary competence of person to cut and restore power. It is understood the policy intent of this provision does not require a qualified electrician to be on the surface but a person who has the necessary skills and training to turn the power off, and back on. There are numerous mine operations where people work alone. Although workers are often required to notify another person when they are working alone and the other person is not necessarily located at the mine on the surface. It is understood the policy intent of this provision doesn't require a competent person to be at the mine but the person doe need to be proximate enough for clause 101(b) to be complied with. It is suggested this clause be amended to allow f the other competent person to be at another location, other than the mine. It is also noted that the requirement for the person to be competent to turn the power off and on is more aligned with risks associated with underground coal mining operations rather than non-coal operations. It is suggested clause 101 be amended to account for the risks associated with non-coal operations.
Division 7	**Information, instruction and training**
103	**Duty to provide information, training and instruction** It is noted that the information, training and instruction to be provided to workers under this clause should be limited to information, instruction and training that is relevant to the workers work. These provisions tend to replicate the duty to provide, information, training and instruction under section 19(3) of the WHS Act and are arguably unnecessary. It is noted that clause 103(2)(a) requires the mine operator to provide workers with information on all hazards. Often, the identification of task specific hazards is part of the risk management process that takes place immediately prior to the commencement of a task (for example, Take 5s). Sometimes, a hazard may arise or a combination of hazards may arise, that are not necessarily contemplated in induction, training and instruction process. However general risk management training should allow workers to manage the risks arising out of the new hazard/combination of hazards before commencing the task (and sometimes such management would involve not performing the task at all). It is suggested the word all be removed. In relation to clause 103(3) clarification is sought on what is meant by 'basic risk management techniques'. Further, given the overarching obligations in respect of worker training, it is suggested the content in clause 103(3), together with further guidance, be moved to a Code of Practice.

	Further clarification, by way of guidance material, should be provided on what types of induction and training will be sufficient for compliance with clause 103. For example, is GMIRM (Global Minerals Industry Risk Management) trainir expected for all workers?
104	**Duty to provide induction for workers** This obligation appears to be an extension of clauses 102 and 103 and is potentially unnecessary. It also appears to require induction on the entire safety management system for the mine even if that information does not impact on the worker's work. It is suggested clause 104 is unnecessary and can be removed, particularly in relation to coal mining operations that still need to comply with Order 34 under the Coal Industry Act 2001 (NSW). Further, any induction requirements should be limited to information relevant to a worker's work at the mine.
Part 3 Health monitoring	
108	**Health monitoring of a worker** Clause 108(3) requires a mine operator to ensure that a worker who has experienced adverse health effects from exposure to a hazard at the mine is removed from the hazard. This clause has potentially complex and difficult implications for a mine operator and is not necessary. Mine operators already have existing obligations to manage wo health and safety risks of workers and, under discrimination legislation, make reasonable adjustments to accommoda an illness/injury. Clause 108(3) is potentially very broad (it could apply to very minor adverse effects) and is not qualifi by what is reasonably practicable. It could also be relied on by workers and worker representatives to compel a mine operator to 'create' a modified position for a worker, for an indefinite period which is not operationally required or commercially sustainable. The policy intent of this provision appears to be about managing a workers exposure to a hazard and accommodating their injury/illness and these intents are already embodied in existing legislative obligatior Further, clause 108(3) may require a mine operator to remove a worker from a hazard even if a medical report under clause 113 does not advise this as being necessary.
110	Duty to ensure health monitoring is carried out or supervised by registered medical practitioner with experience Concern has been raised it may be difficult for mine operators in remote areas to ensure medical practitioners are experienced in health monitoring. This duty should be qualified by 'as far as is reasonably practicable'.

111	**Duty to pay costs of health monitoring** Clause 111(2) requires a mine operator who does not engage a worker, to ensure the PCBU who does engage the worker pay the expenses associated with health monitoring. This should be amended to be a direct obligation on the PCBU to pay rather than requiring the mine operator to ensure payment to a third party. Clarification should also be provided in relation to the term 'all expenses' as this could include a range of contingent expenses the mine operator cannot control.
113	**Health Monitoring Report** As the report is not yet available , it is impossible to determine what impact or additional works this may require.
117	**Duty to give health monitoring report to regulator** Clause 117(a) requires a mine operator to report to the regulator if a health monitoring report indicates any adverse health effect arising from exposure to a risk associated with mining operations. This is potentially very broad and can impose an unnecessary administrative burden on mine operators. It is understood the policy intent behind this provisi is about notification of effects that are significant or not minor. However this is not reflected in the language of the provision and should be amended.
Part 4 Consultation and the workers' safety role	
119	**Safety role for workers in relation to principal mining hazards** Concern has been expressed by some members that the term 'safety role' could be interpreted as a statutory position and have industrial implications. While it is acknowledged this is not the intent of the provision (which is about formalised participation and involvement in the development of certain plans and systems) it is suggested that the concept of the worker safety role be clarified in guidance material or a legislative note.

Part 5 Mine survey plans and mine plans	
121	**Survey plan of mine must be prepared** It is suggested the requirement to have a survey plan should be based on risk and the nature/complexity of operations rather than a fixed number of workers. There is also no reference to NSW Survey and Drafting Directions which are often used by mine operators in relation to survey plans. Clause 121(4)(b) requires the survey plan to show any other disused workings that are attached, or in close proximity to the mine. This clause should be qualified by disused workings that the mine operator has knowledge of and where there is potential for the disused workings to impact on the mining operations. Concern has also been raised that the requirement to have the plan certified by a mining surveyor 'at the mine' under clause 121(2), requires mine operators to directly employ a mining surveyor and does not permit the use of contract surveyors. It is understood this is not the intent of clause 121(2) and contractors can be used to certify the mine survey plan. However, it is suggested clause 121(2) be amended to reflect this intent as the words 'at the mine' at the end of clause 121(2) are potentially confusing. Some surface mines use aerial survey plans (topographical plans) to show current workings. The use of topographical plans produced using this method should be permitted and compliant with Clause 121.
125	**Security of survey data** This clause imposes an absolute duty to ensure the security of mine survey data against loss, damage or unauthorised access. It may not be possible for a mine operator to ensure this outcome despite all reasonably practicable steps being taken to comply. This duty should be qualified by what is reasonably practicable or require the mine operator to take reasonable steps to ensure data security.
Part 6 Provision of information to regulator	
127	**Duty to notify regulator of certain incidents** Clause 127 includes additional 'high potential incidents' that require notification to the regulator over and above what is included in the 'core' Regulation. Notification of an incident under clause 127 also triggers numerous other review and

	record keeping obligations (see clauses 10, 11 and 12) and concern has been raised that the administrative burden arising from clause 127 is excessive and unnecessary. It is also currently very confusing and overly complicated. The interaction between the definition of 'high potential incident' in clause 127(4) and 'dangerous incident' in clause 1 is potentially confusing and requires clarification. It is understood a 'dangerous incident' will be a 'high potential incide if it occurs but there is no person in the vicinity of the incident (and as such, there is no health and safety risk). This means that minor damage to a plant or structure (see clause 177(a)(xv)) for example during a storm could still trigger notification to the regulator under clause 127. This seems unnecessary and inconsistent with the overarching intent of the provisions. It is suggested that the interaction between clause 127 and 177 be reviewed and that some incidents i clause 177 should not automatically trigger notification under clause 127 (if no person is exposed to a health and safe risk). Concern has also been raised that some of the notification events listed in clause 127(4) are excessive. For example, under clause 177(a)(x), an unintended interruption of power may cause main fans in a ventilation system to turn off. Requiring notification of such an event, in the context of a non-coal mine, is an unnecessary administrative burden on mine operators. In addition, some of the language is inconsistent with accepted operational practices e.g. TARPS. It is also noted clause 127(1) requires regulator notification as soon as possible. Clarification is sought on whether this requirement means mine operators must provide verbal notification to the regulator. Clause 127(2) requires notificatio within 48 hours of becoming aware of the incident if it resulted in injury or illness. It is understood the intent of this provision is for the regulator to be notified within 2 business days of the incident occurring. The wording of the clause should be amended to reflect this.
128	**Duty to notify regulator of other matters** This clause contains considerable detail on further matters that need to be notified to the regulator in addition to the requirements of clause 127 and section 14 of the Act (which includes events set out in clause 177 of the Regulation).
Part 8 Statutory functions	
Division 1	**Preliminary** NSWMC does not support the characterisation of some statutory positions as 'key statutory positions'. The characterisation of these positions as key and the obligations relating to appointments to those positions (e.g. clause 135(4)) can have significant implications for mining operators. For example, it is likely those positions characterised as

	'key' will be difficult to fill due to industry demand and attract increased remuneration simply because of the statutory requirements imposed by the Regulation (rather than the nature of the position itself). Further, the requirement to ensure those positions are filled while mining activities are taking place (that is to ensure the positions are not vacant for more than 7 days) has the potential to cause significant, unnecessary interruptions to operations.
Division 2	**Appointing Statutory Positions**
134	**Statutory positions and statutory functions** Clause 134(6) deems the individual holding the position of site senior executive an officer for the purposes of paragra (d) of the definition of officer in section 4 of the WHS Act. This means the site senior executive is imbued with the individual obligations and liabilities under section 27 of the WHS Act regardless of whether they would otherwise be regarded as an officer by virtue of the nature and scope of their responsibilities and influence within the mine operatio under section 9 of the Corporations Act 2001 (Cth). It is understood the policy intent is that the site senior executive w be the most senior person at the mine but this intent is not reflected in the description of the site senior executive functions in Schedule 10. NSWMC does not support the 'deeming' of the site senior executive as an officer for the purposes of the WHS Act either directly (as in the case of clause 134(6) or by implication). NSWMC does not consider it necessary for an individual to have 'deemed' officer liability under the WHS Act in order for them to fulfil the intended function of the site senior executive position. NSWMC submits clause 134(6) should be removed.
135	**Obligations of mine operator** Clause 135(3) requires a mine operator to ensure no more than one individual is appointed to hold a key statutory position. Concern has been raised by some members that the nature of their mine operators is such that it is difficult for one person to fulfil the statutory function for the entire mine. For example, mines that cover a large geographic are may be better served by an arrangement where the statutory function of a mining engineering manager is split betwee two people. Further, for 'fly in/fly out' operations it may also be necessary for two people to share a statutory position given the nature of the rostering and to ensure adequate oversight of the operation and performance of statutory functions at any one time. It is suggested clause 135(3) be amended to allow for a statutory position to be shared between two or more workers where the nature and scope of the mining operations require it. Clause 135(4) requires mine operators to ensure key statutory positions are not vacant for more than 7 days. This is a onerous requirement and may be impossible to comply with particularly given personnel with key statutory position

	competencies and certificates will likely be in high demand within the labour market. It is suggested this timeframe be extended to 60 days with the capacity for individuals to be appointed to acting key statutory positions.
Part 9 Licensed activities	
150(a)	This clause implies that diesel emission testing must be carried out by a licensed person. What is the policy intent? Suggest removal as it will be unworkable requirement in all mining situations and regions.
Part 10 Mine Safety Advisory Council	
158	**Membership** Suggest organisations are not specified - rather employer and employee representatives.
Part 11 Mine Competence Board	
162	**Membership** Suggest organisations are not specified - rather employer and employee representatives.
Part 12 Safety and health representatives	
167	NSWMC supports the proposed content for clause 167.
168	NSWMC does not support the inclusion of detailed provisions for the election of mine safety and health representative and does not support any mandated union involvement in the election. The procedures set out in the proposed clause 168 and the WHS Regulation for the election of health and safety representatives provide sufficient scope for mine operators and workers to develop and implement an election process.
Part 13 Miscellaneous	
175(9)	**Registration of plant designs and items of plant** Clause 175(9) prevents PCBUs from commissioning plant that has not been registered under Part 5.3 of the WHS Regulation. This clause should be amended to allow such plant to be commissioned and used if the registration is lodged with WorkCover (having been inspected by an inspector) but the relevant paperwork is pending.

176	Consider moving this clause to include after the other clauses dealing with notifiable and reportable incidents.
Schedule 3	**High risk activities** Item 6 of Schedule 3 proposes a 3 month waiting period for a new mine entry. Concern has been raised this timefram is excessive. For example, activities such as raise boring should reasonably assessed by the regulator within a month and be suitable for use after that. Concerns have also been raised around Part 1 Clause 3 re electrical testing and simple things like testing for dead - further clarification on intent and application is required to avoid impracticalities of providing 7 days notice for performi electrical testing.
Schedule 4	**Prohibited uses in mines** Item 1- Internal combustion engine: Non-coal mining members have noted there should be an exemption for non-coal mining operations in emergency situations which would allow the use of a portable petrol pump to manage excess water (provided a risk assessment has been undertaken beforehand). For example a portable petrol pumps may be used where decline is filling up as a result of the main electrical pumping system failing and there is no diesel pump readily available (which is sometimes the case). Item 6 - is this really applicable to all mines or just coal - check as impractical for metalliferous mines.
Schedule 10	**Statutory functions** **Mining Surveyor** Item 6(5): Clarification is sought on the meaning of 20 workers or more. Does this apply to 20 workers at the mine at any one time or the entirety of the operation? It is also noted some operations do not employ a permanent mining surveyor and may rely on contractors to undertake this work. Item 6(5) should allow such arrangements to continue. **Electrical Engineer** Item 6(6): This clause states that Electrical Engineers are to be registered on the National Professional Engineers Register. This should be reworded such that Electrical Engineers should have the qualifications to enable registration on the National Professional Engineers Register. The current wording forces personnel to become members of a third party organisation requiring excessive fees for no value added.

	Electrical Tradesperson Item 7(b): Concern has been raised about the specified qualifications and experience requirements in this clause. Iten 7(b) should allow the mine operator to appoint an electrical tradesperson provided the mine operator is satisfied the worker is competent to fill the role. In addition, clarification is sought on whether a register of electrical tradespersons must be provided to the regulator?