

## Draft Work Health and Safety (Mines) Regulation

### Public comment template

**This submission has been put together with the end user being a coal mine conducting mining activities only (construction work) rather than mining operations.**

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

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

Please indicate here by a tick  if this submission or any parts of it are provided in confidence.

Whole submission  Address and contact details  Part (please specify) .....

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This template is divided into two parts:

1. Comments in response to discussion paper
2. Comments in relation to draft regulation

Please ensure you include the page, section number or regulation clause number to which your comment relates. Your submission should, wherever possible, include evidence and examples to justify your position.

### Part 1 - Comments in response to discussion paper

Page or Section No.	Discussion point and your comment
Eg 2.1	

Part 2 - Comments in relation to draft regulation	
Clause number	Title of clause and your comment or suggestion
3	<p><b>Definitions</b> Respirable dust - spelling error <i>'mas' instead of 'has'</i></p>
3	<p><b>Definitions</b> There is no definition in the regulations for Mining Operations or Mining Activities (Construction work) <i>Include the same as the definition in the WHS (mines) Act.</i></p>
3	<p><b>Definitions</b> Hot work - means welding, soldering, heating, cutting, grinding or vulcanising where a temperature of more than 150 degrees Celsius is likely to be generated. This does not align with the Australian Standard definition. <i>Suggest alignment with Australian Standards definition.</i></p>
9 (2)	<p><b>Management of risks to Health &amp; Safety</b> " ... That a risk assessment is conducted by a competent person." <i>Further clarification required as to what level of risk assessment and what is deemed a competent person for level of risk assessment.</i></p>
11(2)(c)	<p><b>Record of certain reviews of control measures – mine operator</b> "recommendations arising from consideration of the incident (with any recommendation directed at preventing a repeat of that type of incident in the future clearly noted)" <i>Clarification on the intent of this section. Is this referring to the recommendations or actions arising and incidents?</i></p>
14 (1)(g)(ii)	<p><b>Content</b> The wording on this clause needs to be changed from integrating to align with the safety management system for the mine. <i>Suggest: "how the contractors health and safety management plan will align and comply with the safety management system for the mine, and"</i></p>
16 (1)	<p><b>Changes</b> Definition on what level of change is required, this would not be practical to notify of all changes to the SMS prior to implementing. <i>Suggest: "The mine operator of a mine must, before any significant change to the SMS for the mine is implemented: "</i></p>
16 (1)(a)	<p><b>Changes</b> Is the intent to just notify or is it that an approval would be required prior to implementation?</p>

	<p>This could potentially cause risks to health and safety of workers if approval was required prior to implementation. <i>Clarification required on when the implementation can take place after the notification.</i></p>
16 (1)(b)	<p><b>Changes</b> Once again if requested to give a copy of any relevant part of the SMS is this prior to implementation? This could potentially cause risks to health and safety of workers if approval was required prior to implementation. <i>Clarification required on when the implementation can take place after copy has been provided.</i></p>
23 (3)(i)	<p><b>Preparation</b> Is this necessary to <i>"set out all the reasons for adopting or rejecting each control measure considered"</i> as part of the actual Principal Hazard Management Plan. This information would be recorded on the risk assessment which is referenced within the management plan. <i>Suggest rewording: "As part of the risk assessment process set out all the reasons for rejecting any of the control measures considered".</i></p>
37	<p><b>Minimum age to work in mine</b> There is no reference to the minimum age of a person for a mine other than an underground. Suggest - <i>remove the word underground</i> and <i>replace with mine.</i></p>
38 (3)	<p><b>Inspection Plan</b> <i>"The mine operator is to ensure that a risk assessment is conducted....."</i> Is this specific for this clause over and above the requirements of clause 9? <i>Suggest delete Clause 38 (3).</i></p>
109	<p><b>Duty to inform of health monitoring</b> There is no requirement of a PCBU to notify the mine operator prior to commissioning health monitoring. <i>Suggest inclusion: "Prior to a PCBU conducting any health monitoring on a mine, the mine operator must be notified."</i></p>
111 (2)	<p><b>Duty to pay costs</b> <i>"If the mine operator of a mine has not engaged a worker at the mine, the mine operator must ensure that the person conducting the business or undertaking that engaged the worker pays all expenses relating to health monitoring."</i></p> <p>If health monitoring is being undertaken on a mine it should cover all areas of the mine where there is a potential of exposure of a certain hazard to a worker. If the monitoring is arranged by the mine operator as part of the mine operator's requirements the cost of the initial monitoring should be the expense of the mine operator not the PCBU. If the PCBU has arranged for additional monitoring outside of the mine operator's requirements then yes the PCBU should pay the expenses relating to the health monitoring. If there is any flow on affects or further monitoring required of an individual worker after the initial monitoring then the ongoing costs should be the expense of the PCBU. <i>Suggest: "If the mine operator of a mine has commissioned health monitoring which includes workers who are not directly engaged as a worker by the mine operator, the mine operator must ensure that the initial expenses of the health monitoring are paid by the mine operator."</i></p>

	<p>or delete this point.</p>
115	<p><b>PCBU to give health monitoring report to operator</b>  <i>"A PCBU must, upon request, give a copy of the health monitoring report required to be kept under clause 118 (1) to the mine operator of any mine at which the workers carries out work."</i></p> <p>A PCBU must inform the mine operator of any health monitoring which is to be conducted (as per comment under Clause 109) to start with along with the PCBU to provide a copy of the report to the mine operator. Not if the mine operator requests.  <i>Suggest change: "A PCBU must provide a copy of the health monitoring report required to be kept under clause 118 (1) to the mine operator of any mine at which the workers carries out work."</i></p>
117	<p><b>Duty to give health monitoring report to regulator</b>  For notification to the regulator to occur in a timely fashion the changes to Clause 109 and Clause 115 would need to be made.  <i>Clause 109 for the PCBU to notify the mine operator prior to conducting the health monitoring.</i>  <i>Clause 115 for the PCBU to provide a copy of the report to the PCBU.</i></p> <p><i>Other option is include in Clause 115 for the registered medical practitioner to provide a copy of the health monitoring report to the mine operator as well as the PCBU.</i></p>
118 (3)	<p><b>Reports kept as records</b>  <i>"A person conducting a business or undertaking who obtains a health monitoring report in relation to a worker under this part must not disclose the report to another person without the workers written consent."</i>  Does this include the mine operator and the regulator?  <i>What is the process if the person refuses permission?</i></p>
119	<p><b>Safety role for workers in relation to principle mining hazards</b>  <i>"The mine operator of a mine must implement a safety role for the workers at the mine...."</i>  <i>Clarification on what this role is and whether the intent of this role is the Health and Safety representative or an additional role has been identified.</i>  The code of practice states if there is a HSR then the mine operator is to involve them in consultation on health and safety matters.</p>
120 (a)	<p><b>Operator to consult with workers</b>  <i>"the development, implementation and review of the safety management system for the mine."</i>  This is quite a broad statement.  <i>Suggest rewording clause 120 to " For the purposes of Section 49 of the WHS Act, the ....."</i></p> <ul style="list-style-type: none"> <li>- <i>remove the letter (f) after the wording section 49.</i></li> <li>- <i>remove (a) from clause 120 all together as section 49 of the WHS Act captures the relevant component of the SMS.</i></li> </ul>
121 (2)	<p><b>Survey plan of mine must be prepared</b>  If a mine is not conducting extraction work at the mine - mining activities (construction work) is it still a requirement to have the plan (construction work plan) certified by a mining surveyor.</p>

	<p>Change to <i>"The mine operator of a mine must ensure that a detailed survey plan of the mine is prepared and certified by a mining surveyor at the mine (only required if extraction occurs at the mine)."</i></p> <p>Include: <i>"Where no extraction work is being carried out at the mine, the mine operator of a mine must ensure that a detailed survey plan of the mine is prepared and certified by a registered surveyor at the mine."</i></p>
127	<p><b>Duty to notify regulator of certain incidents</b> Terminology is confusing as you have notifiable incidents (clauses 176 and 177) to the regulator - immediate notification by telephone and written within 48hrs. Additional - Certain incidents to be notified (clause 127 and Schedule 9 (13.2)) to the regulator - within 48hrs by written notification.</p> <p>Currently you jump from one spot in the regs to another and back again just to work out what is reported and when and by what method.</p> <p>Suggestion - All this information needs to be within one part of the WHS (mines) regulation - one central location grouped together. - Change the terminology of the "certain incidents to be notified" or make them all "notifiable incidents" but the time frame for notification to the regulator for clauses 176 and 177 - immediately followed by written within 48 hrs, time frame for the notification to the regulator for clauses 127 and Schedule 9 (13.2) within 48hrs by written notification.</p>
130	<p><b>Duty to notify operator of notifiable incident</b> <i>"Duty to notify mine operator of notifiable incident."</i> This clause reads that the PCBU would notify the regulator and then notify the mine operator. <i>"A person who conducts a business or undertaking at a mine must ensure that the mine operator is notified as soon as is reasonably practicable of any notifiable incident that has been notified to the regulator under section 15 (2) of the WHS (Mines) Act."</i> The mine operator should be made aware of the notifiable incident prior to it being notified to the regulator. It should be the mine operator who notifies the regulator and the industry health and safety representative of the notifiable incident not the PCBU.</p> <p>Suggest: <i>"A person who conducts a business or undertaking at a mine must ensure that the mine operator is notified as soon as is reasonably practicable of any notifiable incident that <b>is required to be notified to the regulator under section 15 (2) of the WHS (Mines) Act. It is the responsibility of the mine operator to notify the regulator and the industry health and safety representative.</b>"</i></p>
134 (3)	<p><b>Statutory Positions and Functions</b> <i>"An individual may be appointed to hold a statutory position at a mine by the mine operator only if the individual meets the requirements for appointment to the statutory position specified in that Schedule."</i> <b>Schedule 10 does not include the requirements for appointment for SSE, MEM &amp; or OCE.</b></p>

	Inclusion of the requirements to be met for each of the statutory positions.
134 (5)	<p><b>Statutory Positions and Functions</b>  <i>"More than one individual may hold a particular statutory position (other than a key statutory position) and <u>an individual may hold more than one statutory position (including at different mines).</u>"</i>  Clarification on the underlined section meaning.  Does this include key statutory positions as well?  So is an individual in a key statutory position, SSE for example, able to hold another SSE position at another mine (specifically referencing a mine where no extraction is occurring at the mine)?</p>
134 (6)	There is no definition (d) under Officer in the WHS Act. This needs to be rectified.
135 (4)	<p><b>Obligations on mine operator</b>  <i>" The mine operator of a mine must ensure that a key statutory position at the mine is not vacant for more than 7 days ....."</i>  Clarification on the vacant for more than 7 days required.  Is the word "vacant" representative of an individual not being appointed to the key statutory position or is it also including where an individual who is appointed in a key statutory position takes leave for a period of more than 7 days?</p>
137	<p><b>Eligibility for practising certificates</b>  As per comments in Clause 134 (3) - Schedule 10 does not include the requirements for appointment for SSE, MEM &amp; or OCE. That would be required prior to applying for a practising certificate.  Inclusion of the requirements to be met for each of the statutory positions in Schedule 10.</p>
166	<p><b>Parts of coal mine excluded from application of Part 5 of Act</b>  Refer to clause 167 comments.</p>
167	<p><b>Qualifications</b>  Where only mining activities are being conducted on a coal mine with no extraction occurring (construction activities), the qualifications under clause 167 for a SHR and EHSR will not be able to be met. As specified in these regulations it is a requirement for a person to be eligible to be appointed to have 3 years (5 years for an ESHR) experience at a coal mine. The PCBU's that are conducting the work at the mine who may require a SHR for their work group are construction workers from the construction industry. That would mean that there would potentially be no eligible people to be appointed.</p> <p>Part 5, Section 27 (3) of the WHS (Mines Act) - <i>"The regulations may exclude parts of a coal mine from the application of this Part or from specific provisions of this Part."</i> should come into play.</p> <p>Include in clause 166 (2) - <i>"A coal mine that does not have any extraction occurring will be excluded from Part 5 of the WHS (Mines) Act. They shall comply with Division 3 of the WHS Act."</i></p>
Schedule 10 Part 2	<p><b>List of other coal mine stat positions</b>  As per comments in Clause 121 (2) - If a mine is not conducting extraction work at the mine - mining activities (construction work) is it still a requirement to a statutory position of a Mining Surveyor verses a Registered Surveyor.</p>



	<p>Change to <i>"Mining Surveyor (only required if extraction occurs at the mine)"</i></p> <p>Include: <i>"Registered Surveyor (only required if no extraction is occurring at the mine)</i> <i>(a) Statutory function - to control and manage surveying activities and standards forming part of the mining activities at the mine.</i> <i>(b) Requirement for appointment - must be a registered surveyor within the meaning of the Surveying and Spatial Information Act 2002."</i></p>
General	All references to WHS Regulations 609-675 need to be removed as they are not referenced within the regulations.
General	The regulation is quite hard to read as there is a lot of jumping from on clause to another clause. (incident reporting - Notification of incidents, Inspection program etc). Where possible the information should be in the same section of the regulations.