Draft Work Health and Safety (Mines) Regulation

Public comment template

Please send submissions by email to consult.minesafety@trade.nsw.gov.au Submissions must be received by **27 June 2014.**

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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) ☐……..

Name:	**Organisation (if applicable): Perilya Broken Hill Ltd**

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
3.3 Safety Management system	*What are stakeholders' views on the flexibility that the provisions provide with respect to specifying the detail required in the SMS?* The freedom to integrate several operational systems to deliver a holistic approach appears to be 'enabling' but must be supported by a willingness of the regulator to accept that the requirements of this section can be delivered in a number of ways.
3.4 Subsidence	For most metalliferous mines a 'ground or strata instability' PMHMP should address all foreseeable subsidence issues however hazards associated with surface subsidence in coal mines and metal mines using caving techniques warrant separate attention.

3.5 Principal Control Plans	The requirement for emergency response plans is dealt with comprehensively in Division 6. Inclusion here appears superfluous. It is also suggested that Principal Control Plans focus on prevention of critical incidents rather than response.
3.7.2 Movement of mobile plant	*What are stakeholders' views on the inclusion of NCDIs 16.3 to 16.7, 16.9 to 16.14 and 16.15 (8) and (9) in the WHS (Mines) Regulation, as opposed to inclusion in a code of practice?* It is believed that these are unduly prescriptive and would not necessarily be applicable to all mines or to all road-accessible areas within individual mines. They should be included in a code of practice.
3.8.2 Winding Systems	*What are stakeholders' views on the inclusion of NCDIs 15.9 to 15.15 in the draft WHS (Mines) Regulation, as opposed to inclusion in a code of practice?* It is believed that these should be included in a code of practice as these are excessively prescriptive and may preclude valid alternative methods of ensuring safety of winding systems if included in regulations.

Part 2 - Comments in relation to draft regulation	
Clause number	**Title of clause and your comment or suggestion**
Definitions (and Part 13, Schedule 10)	**Definition of Supervisor.** • Inadequate clarity around qualifications, responsibilities and accountabilities of Underground Mine Supervisors, Mining Engineering Manager. Needs accompanying detail. • Q. is there a different level of accountability for Supervisors etc. operating in surface duties eg. Milling Operations?
Definitions p.14	**Shaft –** This is not the common industry definition, which normally only applies to a vertical opening. Suggest that provision needs to be made for the terms cut through and drift (coal mining) and drive and decline (Metalliferous mining) for non-vertical openings.
CL 6(b) p15	**Appointment of Mine Operator.** The Regulation is unclear on the relationship between Senior Site Executive and the Mine Operator. Some guidance may be required on what constitutes *sufficient "skills, knowledge, experience and resources to exercise the functions of the mine operator"*
CL 8, p17	**Regulator may direct if one or Mine Operators are required** In what circumstances would the Regulator exercise the power to direct that multiple operators are required?
CL16, p26	**Changes to Safety Management system.** Given the extent of Clause 14 the requirement to give prior notice of any changes to the SMS is unduly onerous and

	unworkable. It could have the effect of deterring detailed, specific safety management documentation and the continuous improvements of systems.
CL 27, p 33	**Communications between outgoing and incoming shifts** Requirement for sign-off by both Supervisors is unnecessarily onerous – in some circumstances there may be multiple underground supervisors involved on each shift (5 in our operation!). In scenarios where computer systems are used to prepare and transmit shift status reports this requirement would be impractical. We believe that the key requirement is to have a comprehensive and centrally accessible report on the status of critical safety and operational issues that is then communicated to on-coming employees.
CL 29, p34	**Operation of belt conveyors** Sub clause (d) relates to coal mines where the risk of fire is significantly higher than other mines or quarries. The 8 hour time frame is overly prescriptive and the need for an inspection on shutdown should reflect the hazards involved and the associated risks.
CL 34, p39 Sch 3, p157 CL46, p45	**High risk work.** For some of the high risk activities listed in Schedule 3 the requirement to give prior notice each time this activity is planned, and the significant waiting periods will be a significant impediment to the efficient development and operation of mines. As example working within an inrush control zone, as we understand that term to be defined, is a daily activity in many mines employing hydraulic fill. The establishment of a PMHMP and standardised, site-specific controls for management of this risk is a more practical and appropriate approach that would in our opinion obviate the need for prior notice each time this activity is undertaken. The same argument can be made for management of certain classes of Work on Live Electrical Equipment – where the establishment of a comprehensive a Principal Control Plan and Specific Control Measures should in our view, negate the need for prior notice each time the activity is undertaken. This comment is made particularly in relation to live testing work (it would therefore be helpful to clarify the definition of 'live electrical work' and whether this includes testing). . The inclusion of establishment of new mine entries, and the 3 month waiting period for this activity also requires further consideration in our view. It is commonly not possible to provide all of the information stipulated until a contract has been awarded and equipment and work method details are known. The requirement for 3 months prior notice would impose an unreasonable delay to the mobilisation of a contractor and commencement of works in many instances.
CL 47, p46	**Connecting workings** 47(2) requires that both workings are inspected even if the second working is disused. This not practical as the access to the disused working may not be possible. Reasonable efforts such as probe drilling should be permissible to eliminate the risk of inrush or toxic environment before break through.
CL 48, p 46	**Winding systems.** The requirement for "an effective means of communication between the winder communication system and any

	emergency or general communication system at the mine" is not practicable or necessary for some manually operated winders – current practice of routing communication via the winder driver addresses all foreseeable circumstances.
CL49, p 48	**Ropes** *(2) A rope is an **approved rope** for the purposes of this clause if:* *(a) the rope has undergone a test at a testing laboratory or testing authority in Australia that:* *(vii) is independent of the designer, manufacturer or supplier of the rope, and* *(ii) is accredited to carry out the test by the National Association of Testing Authorities, Australia.* This requirement for independent testing is considered to be unnecessary (provided that the supplier/manufacturer is also an accredited tester) and potentially impractical due to the limited number of accredited testing companies with the required capability. We believe that the Duty of Care requirements for suppliers and manufacturers within the Regulation should provide sufficient incentive for suppliers to also provide accurate unbiased testing services on their own products.
CL63, p 57	**Duty to Prepare ventilation control plan** *(3) Without limiting subclause (2), the ventilation control plan must include a description of the following, if applicable to the mine:* *(e) arrangements for an alternate and independent way of operating the main ventilation fans in the event of a loss of power supply,* This has not been common practice in metalliferous mines and retro-fitting existing installations would be cost prohibitive in many cases. Failure of the power supply to main ventilation fans poses little immediate risk to personnel in most foreseeable circumstances provided adequate response measures, such as withdrawal of personnel are implemented.
CL 87, p 85	**Emergency Plans for all Mines** *Reference to the requirement that "(vii) arrangements are in place for emergency sealing of all or part of an underground mine;* We believe that this requirement should only apply to an underground mine in which a specific, material risk has been identified which could conceivably create a need for emergency sealing. Typically this would only be the case for a coal mine.
CL 95, p 89	**Emergency Exits** *95 (2) Each exit must: (a) be accessible from each level in the mine in which coal extraction or stoping operations are being carried out,* Propose that this be reworded to state "a minimum of two useable exits must be accessible from each level in the mine in which coal extraction or stoping operations are being carried out". This caters for mines that have more than two exits but are unable to connect all of these to every level. The removal of the word 'trafficable also avoids conflict with Clause 95 (4)(d) which states that at least one exit must be suitable for vehicles. We also believe the this clause need to recognise that for very deep mines it may not be practical to provide an exit to surface that is fully trafficable via vehicles. Clause 95 (4)(c) – Requirement for physical stoppings between main exit and other roadways should be restricted to coal mines.
CL 99, p 93	**Self Rescuers**

	The 3 month interval for training in donning of self-rescuers is unduly onerous and unnecessary. Further information is required before we can fully comment on the practicality of the requirement for live training or simulation every 3 years and we would question the real value of this requirement regardless of practicality.
CL 127, p 111	**Provision of Information to Regulator** The definition of High Potential Incidents includes two items we believe should be reassessed to ensure practicality; • *127 (4) (j) a misfire or unplanned explosion of an explosive or explosive precursor, and* • *127 (4) (k) an unplanned event that causes the withdrawal of more than 1 person from the mine or part of the mine* Requirement to report every instance of misfired (or incomplete detonation of) explosives is unduly onerous – misfires in development mining faces in underground metalliferous mines are not uncommon and are managed via well established protocols and procedures which render the actual risk to a low level. Misfires are recorded but reporting each instance would be onerous. Evacuations are often precautionary – for example in the event of the failure of communications system or the secondary ventilation system in a localised part of a mine, and a requirement to report each of these is not justified.

CL128, p112	**Duty to Notify Regulator of Other Matters** While clause 128 (4) provides some latitude in the event of unplanned events we feel it would be more appropriate and less open to misinterpretation to remove the requirement for prior notice “no later than 1 month before the event occurs”, and simply leave this as “as soon as is reasonably practicable before the event occurs.”
	Part 9 Licenced activities
CL 150-156, p128-130	**150 Activities to which Part applies** *This Part applies to the following:* *(a) the sampling or analysing of diesel engine exhaust at, or with respect to, an underground mine,* We do not feel that there is any justification for having this activity subject to licensing by the Regulator. Mine Operators are responsible under Div 7, Clause 103 of these regulations to establish appropriate sampling procedures for testing of diesel engine exhausts that address the identified hazards for each specific workplace and equipment type and provide competency training as well as adequate supervision. This obligation should be sufficient without the requirement for licensing of sampling. Similarly the analysis of diesel engine exhaust samples does not warrant licensing in our view. The Mine Operator must ensure that analysis is carried out by suitably qualified persons in accordance with OEM procedures and applicable regulatory standards.