

### Model Work Health and Safety Regulations for Mining - Public Comment Response Form

<b>Name: Bruce Ham</b>	
<b>Comment on Issues Paper</b>	
<b>Section/page number</b>	<b>Comment</b>
<b>Establishing the Context of the Regulation</b>	<p>In order to frame a constructive comment on the regulation it is useful to consider the context of key elements of the Model Work Health and Safety Bill. It would have been useful to restate the key objectives of the WS model Act –</p> <p>‘3 Object</p> <p>(1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:</p> <p>(a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work [or from specified types of substances or plant]; and.....</p> <p>(2) In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work [or from specified types of substances or plant] as is reasonably practicable.</p> <p>17 Management of risks</p> <p>A duty imposed on a person to ensure health and safety requires the person:</p> <p>(a) to eliminate risks to health and safety, so far as is reasonably practicable; and</p> <p>(b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.</p> <p><i>Subdivision 2 What is reasonably practicable</i></p> <p>18 What is reasonably practicable in ensuring health and safety</p> <p>In this Act, reasonably practicable, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including: etc etc.’</p>
<b>Assessing the Needs</b>	<p>The model regulations and the resultant Issues paper fail to identify and discuss a number of key health and safety issues that that presently confront the mining industry.</p> <p>These include the following:</p> <ol style="list-style-type: none"> <li>1 Establishing and maintaining competency of persons who have authority and control of mining operations,</li> <li>2 Implementing mechanisms to ensure the need for confidentiality of personal medical information is balanced against the employers responsibility to ensure persons (with health conditions) are not put at risk by the mining environment or work arrangements,</li> <li>3 Developing structures that enable the compilation of confidential personal health data, group exposure and health outcome data to enable the identification of health outcomes in mine workers that are substantially different from the health expectations of the general population. The aim of such a health risk management system needs to be the early identification of at risk workers and the</li> </ol>

	<p>implementation of strategies to prevent the development of such adverse health outcomes and</p> <p>4 . Recognizing that total permanent disability due to back injury / disorders, fatigue related motor vehicle injury and mental health conditions represents a major component of the burden of disease suffered by mine workers. (this relates to the failure to collect and report data on these issues.)</p>
<b>International Obligations</b>	<p>The issues paper discusses broadly the context of the model mining regulations and identifies some issue that require specific responses to issues where a range of outcomes s possible. The discussion paper fails to give proper weight to Australia's obligation to the International Labour Organisation (ILO) Convention 176 Safety and Health in Mines Convention 176 – 1995. In brief, key sections are as follows:</p> <p>Article 5 – Provision of a competent Authority to monitor and regulate</p> <p>Article 6 – Assess and deal with risk in order – eliminate etc etc</p> <p>Article 7 – Take measure to minimize risk in key areas</p> <p>Article 8 – Emergency response</p> <p>Article 9 – Issues relation to workers exposed to hazards</p> <p>Article 10 – Employers obligations – training, supervision, record of person, report dangerous occurrences and injury,</p> <p>Article 11 – Regular health surveillance for exposed workers,</p> <p>Article 12 – Provisions for two employers on site,</p> <p>Article 13 – Rights of workers,</p> <p>Article 14 – Oligations of workers,</p> <p>Article 15 – Cooperation and</p> <p>Article 16 – 24 Implementation and ILO provisions</p> <p>As a part of the drafting process, the provisions of the model regulations should be mapped against the obligations of the ILO Convention 176 – 1995.</p>
<b>Purpose of regulation</b>	<p>The purpose of prescriptive regulation is to punish failure to undertake a specific measure that may be considered important in protecting health and safety of workers or the public. The purpose of an enabling regulation such as safety management systems is to ensure management allocates some resources to analysing and addressing hazards and related risk. The enabling regulation needs to be framed to engage the key respondents.</p> <p>An approach not considered in the Model mining regulations and the issues paper is the sociology of regulation and the needs and desires of the key stakeholders. This approach may prove very useful in identifying weaknesses in existing and proposed regulations.</p> <p>I suggest the government is seeking a mechanism to provide good safety and health outcomes for the mining population with minimal input. That is the industry should bear the burden for the cost and responsibility for health and safety.</p>

	<p>Mining companies (broadly speaking) are in business to maximize profit on investment in mining operations. They are easily convinced that lost time injuries are an unwanted cost to operations and are positive about taking measures to prevent lost time injuries. On the other hand, they are less concerned about adverse health issues which are experienced by the general population but may be exacerbated by exposure to mining operations or systems of work. They are more cooperative if there is a strong case that a worker's compensation claim will be successful.</p> <p>Workers and their representatives broadly take the view that they are entitled to be paid a reasonable wage for a career long service in the mining industry and look forward to a retirement with a quality of health that is expected for the general population.</p> <p>There are scattered pieces of evidence that the ambitions of the mine workers are not being achieved and I believe that it is in the task of developing regulation that steps may be taken to address the imbalance.</p>
<b>Evidence of systemic failure</b>	<p>There is a recurring theme in inquiries into mine disasters, that the persons in control of operations failed in some respect to fully comprehend and manage the risks associated with that operation.</p> <p>McDonald (1995) reported that the majority of the burden of injury was carried by the small number of persons who suffered very serious injury as a result of mining related incident. He suggested that more detailed analysis of incidents was warranted.</p> <p>Evidence before the 1995 Industry Commission Inquiry into workplace health and safety indicated that for every death reported at work, there were a further five that were unreported because of some work-related disease or other related disorder.</p> <p>Work by Bofinger and Ham (2002) cross matched the register of coal miners in Queensland and New South Wales with the Deaths Index held by the Australian Institute of Health and Welfare. The study which focused on heart disease found miners were better off than the general population which is city based. Results in other categories were less encouraging.</p>
<b>Implications for regulatory strategy</b>	<p>I suggest that the regulations should be designed so that those who have the direct power to contribute to positive outcomes are clearly identified as needing to provide evidence that their obligations have been met.</p>

<b>Individual/Organisational name: Bruce Ham</b>	
<b>Regulations Chapter 9: Mines</b>	
Part 9.1	
<b>Regulation</b>	<b>Comment</b>
Part 9.2	
<b>Regulation</b>	<b>Comment</b>
Part 9.2.4 and 9.2.12 Review	<p>The model regulations strongly promote safety management systems and risk assessment and effective control. While this is commended, there is a question over processes to ensure such systems are developed to a high standard. Without some further input, it is foreseeable that the quality of such safety management systems could be an issue that is examined in a Coroners inquiry. For some, this is an entirely unacceptable outcome.</p> <p>One avenue to be pursued is to require the systems and plans be compiled under the supervision of a competent person who has significant knowledge and experience in these issues.</p> <p>The second approach is to regulate to provide the responsible Minister (or his delegated officer) with the power to approve a review panel before the Safety Management System or Principal Hazard Plan is finalized or accepted.</p> <p>There is a potential role for the industry and the profession to work cooperatively, to develop such a system. Some, but not all elements of such a process is being developed by the AusIMM in conjunction with requirements of professional engineer registration in Queensland.</p>
9.2.21/27 Records of air monitoring	As with many occupational exposures the hazard does not lie in the dust concentration itself, but in the individuals response to the cumulative exposure. Monitoring needs to record dust exposure of the group so late individual cumulative exposure can be determined as a part of an assessment as to whether the individual has a particular sensitivity to dust. The other side to this process is that there is a point at which the cumulative exposure of an individual or group is such the risk of an adverse outcome meets the boundary between acceptable and unacceptable.
9.2.28/29 Ventilation	Ventilation planning and operations need to be undertaken under the supervision of a competent person
9.2.43 Duty to provide information, training etc	Before a mine worker is permitted to work without direct supervision, the mine operator shall assess whether the person has sufficient knowledge of the hazards and safety management systems to permit the worker to undertake duties safely.
Part 9.3	
<b>Regulation</b>	<b>Comment</b>

9.3.4 Duty to carry out health monitoring	<p>This needs to be the first regulation in this section. The word 'monitoring' should be replaced with the words 'assessment and monitoring'. The word 'assessment' is critical because the employer needs to assess whether the potential worker is 'fit for the duties required (or proposed). Fatigue, drugs and alcohol and other impairment follow.</p> <p>Delete 3b – The mining environment is such that all persons may be required to undertake any duty. The fitness assessment provides for limitations if required.</p>
9.3.6 Health monitoring records	<p>The value of health surveillance is greatly enhanced by pooling information into a central authority such as in Western Australia, Queensland and New South Wales. It provides for confidential mobility of health records and enables epidemiological studies.</p> <p>Suggest – 'The Minister may authorise third party access to confidential medical information of employees provided confidentiality obligations are met and the purpose is for betterment of health and safety in the industry.</p>
<p>New section 9.3.7</p> <p>Health and safety management system for occupational exposures</p>	<p>A system needs to be implemented to track exposures as in a group data format so that dose-outcome relationships can be established. Such an exposure tracking system has been implemented in the Western Australian mining sector. Regulation or more likely other mechanisms are required to connect the workers exposure data to the health outcome data and ensure that vigorous and valid analysis is undertaken.</p> <p>The objective is to identify trigger points such as cumulative exposure or deterioration in some health parameter to implement a risk reduction strategy.</p>
<b>Other Comments</b>	