

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

Individual/Organisational name: ACCI Comments

Regulations Chapter 9: Mines

ACCI supports the harmonisation of the Mining requirements into this Chapter and encourages the completion of the Chapter to complement the timing of the model WHS Act and regulations. It is important that both the general requirements and mining requirements are implemented at the same time.

Please note that there is still an unnecessary level of prescription and the Chapter needs to be checked for consistency with the model WHS Act and regulations (and Codes). Flexibility should be encouraged and can produce improved safety outcomes. Providing businesses with specific guidance to encourage them to comply with an overall aim has been shown to achieve better results than the imposition of rules and regulations.

Unfortunately, the focus through the WHS process has been on 'regulation'. Codes have been used to deal with some specifics but industry guidance should be considered more seriously. This would also remove the prescription and tendency to overregulate and the concomitant increase in administrative burden.

The chapter should reflect the WHS Act with appropriate qualifiers such as 'reasonably practicable'. This needs to be checked and used consistently throughout. Also the risk management should be changed to reflect the changes made to the WHS Regulations

It needs to be clear how non-core and core jurisdictions are intending to implement the requirements. There should be provision for an early review of implementation issues that may arise. Interaction with other overlapping regulatory bodies needs to be clearly outlined. Concerns about the overlap with other chapters of WHS regulations also need to be clarified.

Generic Risk assessment should be provided, throughout the WHS Regulations

Some of ACCI's members are concerned by the definitions and feel that a mine should not include extractive industry activities commonly identified as quarries (rock, gravel, gypsum, lime etc) and pits (sand, clay etc) and excavation pertaining to civil construction.

For many ACCI members Chapter 9 represent significant changes to current work practices and allocation of resources and time is required. For example the newly included small to medium quarries will need to update and amend their management practices, work practices and training regimes to comply with the new regulations.

AS with other aspects of the WHS package an extensive education program must be developed and implemented to help mine operators understand and comply with the new regulations.

ACCI supports our member recommendation that there be a substantial transition period for the heavy construction materials industry and that it should be applied for at least one year.

ACCI member also recommends that the Small Mines Safety Management Kit, developed by New South Wales, is a successful model for assisting industry in improving health and safety outcomes and could be considered for wider application

Part 2 does not reflect its intent, which is that the Work Health and Safety Management System is to be a single integrated document designed to manage all health and safety matters. Also, and there are a number of provisions that are identified as dealing with underground mining operations, and some that are not. This lack of consistency can be confusing for the reader.

Work Health and Safety Management System (WHSMS) is to be a single document that coordinates and integrates all aspects of health and safety management on the mine. A single document that clearly identifies hazards, risk management practices and other health and safety requirements will have the greatest positive impact on improving health and safety outcomes.

However, when reading the regulations, as drafted, it is not clear that the WHSMS should be the main, central document for managing health and safety on a mine. WHSMS should also contain the requirement to develop an emergency plan, mine survey plan or keep a mine record. It is important to acknowledge that the WHSMS is managing safety and health risks but that it is one part of a bigger operational management system and will also interface with other specific management systems (environment, community, financial etc).

It is also important to recognise that many PCBUs that enter a mining operation will have safety and health managements system that their workers are trained in. It is unreasonable to expect a PCBU entering a mining operation for a specific and defined purpose and time to adopt the site WHSMS when their own system is equivalent and can be cross mapped into the site WHSMS.

It is inappropriate for contractors who carry out jobs such as road works or building works on mine sites to be required to follow the same safety and health management system as mine workers on site rather that the specific risk management system appropriate to the contractors task.

Part 9.1

Regulation	Comment
9.1.1	The definition of a mine is much improved. Concern still remains that distinction should be clear between underground mines and other mining operations such as quarries etc. Where necessary and where certain provisions apply to one or the other , the distinctions need to be very clear
	Clarity is sought on smelting operations, handling storing and extracting minerals and stockpiling also exploration activities and the implications for pipelines
9.1.1(3)	ACCI supports a clear statement that A mine is not:

	(a) a major hazard facility (b) a construction site
9.1.2(1)(a)	Add “for commercial use” after ‘ground’.and “ ground disturbance” needs clarification.
9.1.2(2)(a)	The word “materials” be replaced by “minerals” for accuracy.
9.1.2(2)(b)	The word “materials” be replaced by “minerals” for accuracy. “in connection with” the mining operation needs further clarification
9.1.4	The review of risk management under general WHS regulations would assist in clarifying where hazard applies and where risk applies. ACCI recommends a review of this chapter in line with general WHS chapters The intention of low likelihood and but high risk outcomes may need further clarification
9.1.4(1)(a) and b)	The mixing of hazards and activities in this section needs clarification A single document that clearly identifies hazards, risk management practices and other health and safety requirements would assist. A link where necessary with the Work Health and Safety Management System (WHSMS) as a single document that coordinates and integrates all aspects of health and safety management on the mine would be helpful.
Note	As per recommended new provision at 9.1.1(3), this note should be deleted.
9.1.7(4)	The chapter should reflect the WHS Act with appropriate qualifiers. This needs to be checked and used consistently throughout eg ‘reasonably practicable’ ‘reasonable steps’, ‘reasonable concern”, reasonable grounds” etc.
9.1.8	Some members were unsure as to the distinction between the mine holder and the mine operator. Some clarification would be helpful.. Scenarios may be helpful to clarify the interactions in guidance
9.1.9	This section should reflect the Health Monitoring Guidance to be produced by SWA. In the interim it would be better not to be overly prescriptive. This section must rely on detection ie absence or presence of drugs or alcohol. Protocols for fair procedures, and education and assistance of workers are needed to support this provision - worker disclosure, worker refusal, alternative provisions for PCBU action when worker refusal all need to be considered.
Part 9.2 MANAGING RISKS	This section should refer to the communication of ‘all relevant’ information. This section should not be prescriptive and should not be restricted to communication in writing, issues are around incoming and outgoing shifts and difficulties of remote locations The section should be checked to ensure consistent language
Regulation	Comment

<u>DIVISION 1</u>	
Application	This section should be checked to ensure it only relates to specific mining risk management and reflects the Risk Management section that now applies to WHS Regulations
	The use of the terms risk and hazard are inconsistent. This provision is related to 'risk' not hazard.cf 9.2.3 (2) and (3) etc
9.2.3(4)	The use of the term remaining risk becomes problematic – phrase such as if the risk is insufficiently controlled by 20 and 3) then PPE can be considered and reference made to Division 5 of the final Regulations. Div 5 details how personal protective equipment must be provided as well as provision around use.
9.2.4(1)(f) and (3)	This section needs to accurately reflect the provisions in the WHS Act There needs to be a specific “ trigger” to establish conditions for HSR to review
9.2.4(3)b)	“not adequately reviewed is subjective and will cause difficulties in the workplace. Suggest this could be reworded positively where the mine operator should review as required by circumstances
9.2.4(b)	This is also very cumbersome. “Significant” raises the same issues as “not adequate”. It will vary with circumstances. Suggest (4) be deleted
9.2.5	<p>The Work Health and Safety Management System (WHSMS) is to be a single integrated document designed to manage all health and safety matters. The WHSMS is a single document that coordinates and integrates all aspects of health and safety management on the mine. It should be the main, central document for managing health and safety on a mine. As a single document it should clearly identify hazards, risk management practices and other health and safety requirements and this it will have the greatest positive impact on improving health and safety outcomes.</p> <p>The WHSMS should also contain the requirement to develop an emergency plan, mine survey plan or keep a mine record</p> <p>It is important to acknowledge that the WHSMS is managing safety and health risks but that it is one part of a bigger operational management system and will also interface with other specific management systems (environment, community, financial etc).</p> <p>It is also important to recognise that many PCBUs that enter a mining operation will have safety and health managements system that their workers are trained in. It is unreasonable to expect a PCBU entering a mining operation for a specific and defined purpose and time to adopt the site WHSMS when their own system is equivalent and can be cross mapped into the site WHSMS.</p> <p>It is inappropriate for contractors who carry out jobs such as road works or building works on mine sites to be required to follow the same safety and health management system as mine workers on site rather that the specific risk management system appropriate to the contractors task.</p>
9.2.5	<p>Insert ‘reasonably practicable’ This is complex and involves more than one duty holder so must be qualified.</p> <p>Part b needs to show that all workers must take reasonable care for others and All others must take reasonable care for all others</p>

	The WHSMS cannot of itself ensure It should not refer to all aspects of risk control
9.2.6(1)(a and b and c)	Should refer to health and safety policy not just safety policy Insert 'reasonably practicable' This is complex and involves more than one duty holder so must be qualified. Replace "risks to health and safety" with "risks to workers". needs to show that all workers must take reasonable care for others and All others must take reasonable care for all others C) is not in the general WHS regulations
9.2.6(1)(g)	Delete this provision. It is also unclear how this would apply to quarries
9.2.6(1)(j)	Delete this provision.
9.2.8(1)	Components of a WHSMS will be reviewed and revised as required; however a full review of the entire system would typically be undertaken in industry every 5 years. A move to 3 years will impose a significant burden with no indication that health & safety outcomes will improve.
9.2.9(1)	These reporting requirements need to be justified. Record keeping for the sake of it is not supported, record keeping for the regulator is also not supported. Industry would be happy to provide information "for the purpose of performance tracking and industry benchmarking" but require strict requirements on use of information and the confidentiality provisions i.e. that only aggregate data that does not identify operators would be publicly reported. The information could be provided annually
<u>DIVISION 2</u>	This section should be checked to ensure it only relates to specific mining risk management and reflects the Risk Management section that now applies to WHS Regulations
9.2.10	Suggested rewording to avoid the need to prepare a PMHP when the principal mining hazard does not exist i.e. a surface mine will not have mine shafts and winding operations. Replace (1) with "The mine operator of a mine must prepare a principal mining hazard management plan that addresses each principal mining hazard identified at the mining operation under regulation 9.2.1."
9.2.11	
9.2.11(1)	The chapter should reflect the WHS Act with appropriate qualifiers. This needs to be checked and used consistently throughout eg 'reasonably practicable' 'reasonable steps', 'reasonable concern', reasonable grounds" etc Insert 'as far as reasonably practicable' after must.
9.2.11(1)(b)	There is further confusion between risk and hazard. The use of the terms risk and hazard are inconsistent. This provision is related to 'risk' not hazard.

9.2.11(2)(a)	Use risk management section for the Act and Code of Practice requirements. Likelihood, probability and severity need to be used accurately.
9.2.11(2)(b) and (c)	This is best located in the WHSMS Code of Practice.
9.2.11(2)(d)	delete.
<u>DIVISION 3</u>	The chapter should reflect the WHS Act with appropriate qualifiers. This needs to be checked and used consistently throughout eg 'reasonably practicable' 'reasonable steps', 'reasonable concern', 'reasonable grounds' etc Insert 'as far as reasonably practicable' after must. This section should be checked to ensure it only relates to specific mining risk management and reflects the Risk Management section that now applies to WHS Regulations
9.2.13	Insert qualifier there are other appropriate forms other than in writing
9.2.14(1)(a)	Insert qualifier
9.2.14(1)(b)	Insert 'as far as reasonably practicable' after must ensure. It not possible to ensure that exploratory bore-holes will indicate the presence and location of the hazard.
9.2.14(1)(c)	The term 'safe zone' is not in common use in the minerals industry; we recommend that 'separation distance' be the term used.
9.2.14(2)	Insert 'as far as reasonably practicable' after must. The intent of this provision is supported however it is not possible to place the absolute duty on the mine operator when there is a reliance on other persons.
9.2.14(3)	Insert 'as far as reasonably practicable' after ensure. The intent of this provision is supported however it is not possible to place the absolute duty on the mine operator when there is a reliance on other persons.
9.2.15(1)	This provision should relate to shafts that are operational and have winding systems. Insert 'as far as reasonably practicable' after must ensure. There are numerous disused and non-operational shafts from time to time at a mining operation. Reword to "The mine operator of a mine must ensure, as far as reasonably practicable, that every winding system for any operational shaft at the mine...." There will be a Code on this issue please consider whether this level of detail is required.
9.2.15(f)	Insert after entry to every "operational shaft"
9.2.15(5)	Insert 'as far as reasonably practicable' after ensure. There is a reliance on other persons. Insert 'operation' prior to shaft.
9.2.15(6)	Insert 'as far as reasonably practicable' after must ensure. There is a reliance on other persons.

9.2.15(7)	Insert 'as far as reasonably practicable' after must ensure. There is a reliance on other persons.
9.2.16(2)	Replace "have regard to" with "consider". Plain English is preferred.
9.2.16(2)(a-e)	This detail is provided for in the Code of Practice delete
9.2.17	. Insert 'as far as reasonably practicable'
9.2.18	Delete Subclause (b) of 9.2.6(1) requires systems, procedures and risk control measures; there is no need to identify what is but 1 of these; in fact it serves to minimise the other control measures that (b) requires.
9.2.19	Insert 'as far as reasonably practicable' after must ensure.
9.2.19(b)	delete safe level The 'safe' level is variable according to specific circumstances. The moisture content should be considered as part of risk management. This only relates to specific mining risk management and reflects the Risk Management section that now applies to WHS Regulations
9.2.20	Delete cf air quality is in the following provisions.
9.2.20(2)	Remove to Code of Practice.
9.2.21(1)(a) and (b)	Start provision with 'minimise' and then delete (b).
9.2.21(2)(a)	Insert "beyond exposure standards" after contaminant.
9.2.21(2)(b)	Remove to Code of Practice. Note this is only two of the contaminants that may be present.
9.2.21(3)	Refer to Risk Management section of WHS regulations Either delete or cross reference Or reworded to "The mine operator must, so far as is reasonably practicable, comply with this recommendation by managing the risk. This can include personal protective equipment."
9.2.21(4)	Insert 'as far as reasonably practicable' after must ensure as (c) relies on another person.
9.2.21(4)(a) and (b)	Cf Division 5 personal protective equipment.
9.2.22(1)	Replace "having regard to" with "consider". Plain English is preferred.

9.2.22(2)	Insert 'as far as reasonably practicable' after must ensure as (c) relies on persons with design duties.
9.2.22(a)	This provision should use "safe oxygen level" rather than the lower limit.
9.2.23 (2-5)	Insert 'as far as reasonably practicable' after must ensure.
9.2.24	The provision is about workers and relevant other persons, the heading should reflect this and the word 'relevant' added.
9.2.25	this section be titled "Information available". And reword to reflect how compliance could be demonstrated.
9.2.26(2)	Delete the adjective 'suitable' and replace with "accredited". Replace "having regard to" with "consider"
9.2.28(1)	Insert 'as far as reasonably practicable' after must ensure. The purpose of this section is the "exposure to risk" and should reflect this aim. (c) is unworkable as there are situations where air will be contaminated but it doesn't represent a risk. This is applicable to underground mines but not surface mines – this needs to be stated clearly
9.2.28(2)	Delete "the purest source available" and replaced with "uncontaminated respirable air."
9.2.28(3)	Replace air current" with air flow". It is not clear what is meant by 'regularly'.
9.2.29	Delete This is already undertaken as part of the principle mining hazard plans
9.2.30	This section should be rewritten to provide for the mine operator having a duty to identify items through 9.2.11 that should not be brought onto site or used on site. The draft Schedule 9.3 can then be placed in guidance as a reference point.
9.2.31	Temporary departure must be accounted for. This should refer to planned closure.
<u>DIVISION 4</u>	The chapter should reflect the WHS Act with appropriate qualifiers. This needs to be checked and used consistently throughout eg 'reasonably practicable' 'reasonable steps', 'reasonable concern', reasonable grounds" etc Insert 'as far as reasonably practicable' after must. This section should be checked to ensure it only relates to specific mining risk management and reflects the Risk Management section that now applies to WHS Regulations Emergency Plan should be consistent with other WHS regulations but can have additional considerations
9.2.32(3)(iii)	What does 'adequate' refer to how will 'respond effectively' be determined?

9.2.32(4)(b)	This needs to be consistent with WHS regulations and could cf to the section The qualifier SFARP applies here Consult means taking into account a person's views therefore (b) is not required.
9.2.32(5)	delete.
9.2.35	Insert 'as far as reasonably practicable' after must.
9.2.37(1)(a-b)	These sub clauses are not required as they are integral to an underground mine. This may not apply to surface mines – delineation is required
9.2.37(2)	The intent is to provide escape routes in an emergency – as appropriate given the circumstances. Should not be a prescribed number. Prescribing a 3 rd exit beyond the normal exit and the hoisting shaft is not always possible. NB hoisting shafts can be appropriate.
9.2.37(3)	Delete (implies a 4 th exit)
9.2.41(1)	This section must extend to recovery of equipment and remediation of the site. Insert “and remediation” after ‘rescue’ in (1).
9.2.41(3)	Delete inrush
9.2.41(4)	Insert ‘as far as reasonably practicable’ after must ensure as the provision relies on another person. Division 5 of the final Regulations details how personal protective equipment must be provided as well as provision around use.
<u>DIVISION 5</u>	The chapter should reflect the WHS Act with appropriate qualifiers. This needs to be checked and used consistently throughout eg ‘reasonably practicable’ ‘reasonable steps’, ‘reasonable concern’, ‘reasonable grounds’ etc Insert ‘as far as reasonably practicable’ after must. This section should be checked to ensure it only relates to specific mining risk management and reflects the Risk Management section that now applies to WHS Regulations
9.2.42(1)	Provision prior to a worker commences work is not helpful but a baseline can be obtained at induction
9.2.42(1)(a)	The worker can receive a written summary only of the element(s) of the WHSMS that applies to them as part of the site induction. But access to the WHSMS may be a better description – it could be available on line and this would allow for any updates and changes to be provided.
9.2.42(3)(b)	Delete
9.2.43(a)	This section should be checked to ensure it only relates to specific mining risk management and reflects the Risk Management section that now applies to WHS Regulations This would assist minimise the confusion between risk and hazard. Replace ‘hazards’ with ‘risks’

9.2.46	The record of training should be kept for 2 years. Consistent with other sections of WHS regulations
Part 9.3 FITNESS FOR WORK AND HEALTH MONITORING	
Regulation	Comment
9.3.2(1)	Insert after 'arising from the' - "presence of drugs or alcohol (determined above exposure standards) by any person." This has to be based on measurable detection techniques
9.3.3	"A worker or other person must not enter or remain at a mine if they have alcohol or drugs. This has to be based on measurable detection techniques. Guidance on actions possible if worker refuses to undertake any measurement or redirection for work is also required Workers can be encouraged to nominate to remove themselves
New Provision 9.3.3A	"Fatigue is not currently measurable so the detectable levels cannot be used. This should be considered for guidance only Delete
9.3.4(1)	Insert 'so far as reasonably practicable' after must ensure. This has to be based on measurable detection techniques This should be considered for guidance only
9.3.4(2)(a)	This provision cannot be complied with for existing workers. Insert 'as far as reasonably practicable' after must. Transitional provisions are required to allow the mine operator sufficient time to comply. .
9.3.4(2)(b)	It is not always possible to undertake health monitoring before a worker ceases work. Insert 'so far as reasonably practicable' after must ensure. This has to be based on measurable detection techniques This should be considered for guidance only Guidance on actions possible if worker refuses is also required
9.3.4	Delete provision. Dealt with elsewhere in the WHS regulations. It is inappropriate.
9.3.5	This section must allow for a Mine Operator to be made aware of any health issues that arise at the mining operation. There must be a duty on the registered medical practitioner to report any issue that presents a risk to a worker.
Part 9.4 CONSULTATION AND all WORKERS' SAFETY ROLE	
Regulation	Comment

	The mine operator of a mine must consult and develop strategies for controlling the risk arising from mining operations Delete this is already covered elsewhere Reference can be made to other sections of regulations and codes
Part 9.5 MINE SURVEY PLANS	
Regulation	Comment
9.5.1(1)(a)	This does not apply to surface mines especially quarries delete Geocentric data can be used but should also allow for GPS related reference if applicable. Plan must state where it's needed
9.5.1(3)	All of this does not apply to surface mines especially quarries
9.5.2(b)	This should be required when the previous plan is superseded (2years) annually is too frequent especially for small mines (quarries) and should rely on significant mine modifications for review
9.5.3(1)	This should be required when the previous plan is superseded (eg2years if no significant mine modification) All previous versions for the life of a mine which could be 80years. Limit should be around 2years as per life of prosecution records
Part 9.6 NOTIFICATION OF HIGH POTENTIAL INCIDENTS	
Regulation	Comment
9.6.1(2)	notification of a <i>highly dangerous incident</i> This should be checked with the Act sect 36-38 High potential needs a specific definition.... Dangerous incident is already specified and notifiable. Should be specific about the events or occurrence captured and the reasons justified.
Part 9.7 MINE RECORDS	
Regulation	Comment
9.7.1(2)(b)	It is inappropriate that details of a mine operator's investigation be placed on the Mine Record and therefore be available for view by all workers. A summary of highly dangerous incidents or notified incidents could be made accessible to any worker where necessary. These are already required for any HSC to review where necessary and/or HSR.
9.7.1(3)(b)	Each record in the mine record is required to be kept for 7 years. There is no value in keeping shift communication record for 7 years. Notifiable incidents or dangerous incidents could be kept for a period of 2 years to be consistent with WHS regulations This is an unnecessary administrative burden.

SCHEDULES	
Schedule 9.1	
General	Quarterly reporting is onerous as detailed above at 9.2.9(2)
4.	
Schedule 9.2	
General	This detail duplicates what is in each PMH Code of Practice. There is also significant overlap with Division 3
Schedule 9.3	
	As detailed above at 9.2.30, the Schedule should be placed in guidance as a reference point.
Schedule 9.4	
1.2	'up-to-date' should be clarified
4.4	duplication of 3.1(a) delete
Other Comments	
<ol style="list-style-type: none"> 1. The mining chapter could be restructured. 2. The WHSMS is the key and therefore should have a central position with other requirements underneath it. Eg Control of risks is a subset of the WHSMS. 3. Risk management should be upfront of the WHS regulations and a note could be made at the start of the Chapter to reflect this 4. Underground operations needs to be clearly identified and delineated so surface mines can be clearly distinguished. 5. Adequate transitional arrangements are required 6. Industry need to have Chapter 9 included in the WHS regulations and implemented at the same time (1 January 2012) although the commencement dates can allow for transition and education periods 	

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