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

Regulatory Impact Statements (RIS) are fundamental to the proper design, comprehension of and consultation for legislation.

Page 30 of the COAG Best Practice Regulation Guide gives instruction for RIS and legislation creation and it provides seven principles relating to adequate consultation: See here http://www.coag.gov.au/council/docs/COAG_best_practice_guide_2007.pdf

Some excerpts:

Consultation ensures that both the regulator and the regulated have a good understanding of the problem, alternative options to address it, possible administrative and compliance mechanisms and associated benefits, costs and risks.

Lack of consultation can lead to regulation that is inappropriate to the circumstances, costly to comply with and poorly adhered to.

How can it be reasonable that public comment for the draft legislation closes on 14 October when one of the most critical parts of the legislation package was released only 10 October? That would allow only 4 to 5 days to consider the RIS as part of any submission on the draft legislation.

What has occurred for this regulation is “build first – design later”. A sure recipe for a poor outcome.

How can the regulation be acceptable when an acceptable RIS could not be published for nearly 3 months after the legislation was published?

The facts are as follows:

When the regulations were released, the Safework web site stated that the RIS would be made available on **29 July**. But the RIS was not released on that day.

The RIS became available on the Safework web site on 10 October 2011. Approximately 3 months later than the date that the draft regulations were released July 15.

As the first planned RIS release date passed, on about July 29 the web site was quietly updated to state this:

Document title	Pdf. file type	Doc. file type	Release date	Closing date
Model WHS Regulations - Mining	 Model WHS Regulations - Mining	 Model WHS Regulations - Mining	Friday 15 July 2011	Friday 9 September 2011
Issues Paper	 Issues Paper	 Issues Paper	Friday 15 July 2011	Friday 9 September 2011
Consultation Regulation Impact Statement (RIS)	Consultation Regulation Impact Statement	Consultation Regulation Impact Statement	Wednesday 17 August 2011	Friday 9 September 2011

**Was 29
July**

By “quietly”, there was no notice of this change sent to web-site subscribers.

Note here the original intent to give the same amount of time to comment on the RIS as was given for the draft legislation, both closing on 9 September.





But when that delayed release date passed, the RIS still was not published. By 25 August the web site was again quietly revised to state this:

Document title	Pdf. file type 	Doc. file type	Release date	Closing date
Model WHS Regulations - Mining	 Model WHS Regulations - Mining	 Model WHS Regulations - Mining	Friday 15 July 2011	Friday 9 September 2011
Issues Paper	 Issues Paper	 Issues Paper	Friday 15 July 2011	Friday 9 September 2011
Consultation Regulation Impact Statement (RIS)	Consultation Regulation Impact Statement	Consultation Regulation Impact Statement	The RIS will be posted when OBPR has considered it. This is anticipated to occur soon.	Friday 9 September 2011

Now the delays are made to look like they are caused by the Office of Best Practice Regulation.
<http://www.finance.gov.au/obpr/proposal/index.html>

The advice on the Safework web site remained as per above table until about 23 September, at which time it was again quietly changed to the following: Clearly there was a problem here because the closing date for the regulations was also extended by about one month, due to delays in the RIS.

The closing date of the public comment period has been extended pending the availability of the Mining Consultation Regulation Impact Statement (RIS)

Document title	Pdf. file type	Doc. file type	Release date	Closing date
Model WHS Regulations - Mining	 Model WHS Regulations - Mining	 Model WHS Regulations - Mining	Friday 15 July 2011	Friday 7 October 2011
Issues Paper	 Issues Paper	 Issues Paper	Friday 15 July 2011	Friday 7 October 2011
Consultation Regulation Impact Statement (RIS)	Consultation Regulation Impact Statement	Consultation Regulation Impact Statement	The RIS will be posted when OBPR has considered it. This is anticipated to occur soon.	Friday 7 October 2011

But then as the new deadline for comment on the regulations rolled around, on about 7 October the website was again amended to state this:

The closing date of the public comment period has been extended pending the availability of the Mining Consultation Regulation Impact Statement (RIS)

Document title	Pdf. file type	Doc. file type	Release date	Closing date
Model WHS Regulations - Mining	 Model WHS Regulations - Mining	 Model WHS Regulations - Mining	Friday 15 July 2011	Friday 14 October 2011
Issues Paper	 Issues Paper	 Issues Paper	Friday 15 July 2011	Friday 14 October 2011
Consultation Regulation Impact Statement (RIS)	Consultation Regulation Impact Statement	Consultation Regulation Impact Statement	Monday 10 October 2011	To be confirmed

This, if it actually happened as stated, would allow only 4 days to comment on the legislation after the RIS became available.

Then on 10 October the Safework web site was finally updated to this:

Document title	Pdf. file type	Doc. file type	Release date	Closing date
Model WHS Regulations - Mining	 Model WHS Regulations - Mining	 Model WHS Regulations - Mining	Friday 15 July 2011	Friday 14 October 2011
Issues Paper	 Issues Paper	 Issues Paper	Friday 15 July 2011	Friday 14 October 2011
Consultation Regulation Impact Statement (RIS)	 Consultation Regulation Impact Statement	 Consultation Regulation Impact Statement	Monday 10 October 2011	To be confirmed 
Model Codes of	 Work Health and	 Work Health and	Friday 15	Friday 14







The RIS had finally been published.

By that time most readers will have reviewed the legislation or prepared comment, without the aid of the RIS. Too many would not be inclined to or be able to go back and revise their comments based on important available information in the RIS.

Those that were waiting for the RIS to be released would have probably missed it or given up.

Any submission about the draft mining legislation made on or before 10 October can not have been based on having the full information, so the comments could be invalid, or at least deserve a fair chance to be revised and re-submitted.

Today, 14 October 2011, the web site states this:

Document title	Pdf. file type	Doc. file type	Release date	Closing date
Model WHS Regulations - Mining	 Model WHS Regulations - Mining	 Model WHS Regulations - Mining	Friday 15 July 2011	Friday 14 October 2011
Issues Paper	 Issues Paper	 Issues Paper	Friday 15 July 2011	Friday 14 October 2011
Consultation Regulation Impact Statement (RIS)	 Consultation Regulation Impact Statement	 Consultation Regulation Impact Statement	Monday 10 October 2011	Friday 11 November 2011
Consultation Regulation Impact Statement (RIS) for Mining Survey			Monday 10 October 2011	Friday 11 November 2011

Why was the RIS delayed so many times and for so long?

Recall that the RIS for the first tranche of WHS regulations was also delayed in a similar manner.

I believe this example is one of several that is symptomatic of larger problems that will undermine Safeworks ability to create an adequate RIS that and therefore this puts the quality of their regulation making in doubt.

If Safework regulation making processes are flawed – then how can the draft regulations not be flawed too?

When there are good legislation processes in place the RIS development precedes the legislation, in a similar fashion that an architects drawings precede the construction of a building. To do it the otherway around would likely give a very poor result.

And because the RIS was so problematic how can it be that the draft legislation produced several months prior will not be problematic?

As of 14 October the RIS for this legislation is still not listed on the OBPR's RIS register.

<http://ris.finance.gov.au/>

Could that mean that the OBPR still do not believe the Safework RIS is adequate like other RIS listed here?

The COAG Guidelines also state this on page 8.

In step three

"The draft RIS approved by OBPR should be publicly released as part of the mandatory community consultation process."

And while the RIS has indeed been released, it has been released after several delays and extensions of time. It only became available about 3 months after the legislation was published.

COAG Guidelines also state on page 8.

Step four:

Consult with affected stakeholders by placing advertisements in all jurisdictions to give notice of the intention to adopt regulatory measures, to advise that the RIS is available on request and invite submissions.

I rarely ever read newspapers so I could not say that this was not complied with, however Safework, sent out an email to subscribers to advise that the draft legislation was available. But a similar email was never sent about the RIS. So the community will not have had adequate notice.

COAG and the OBPR should have a good hard look at Safework legislation making processes.

Individual/Organisational name:	
Regulations Chapter 9: Mines	
Part 9.1	
Regulation	Comment
	See above
Part 9.2	
Regulation	Comment
	See above
Part 9.3	
Regulation	Comment
	See above
Other Comments	

Codes of Practice	
Roads and Other Vehicle Operating Areas	
Section/page number	Comment
	See above
Managing Naturally Occurring Radioactive Materials in Mining	
Section/page number	Comment
	See above
The Mine Records	
Section/page number	Comment
	See above

WHS Management Systems in Mining	
Section/page number	Comment
Inundation and Inrush Hazard Management	
Section/page number	Comment
	See above
Emergency Response in Australian Mines	
Section/page number	Comment
	See above
Strata Control in Underground Coal Mines	
Section/page number	Comment
	See above
Ventilation of Underground Mines	
Section/page number	Comment
Survey and Drafting Directions for Mine Surveyors	
Section/page number	Comment
	See above
Health Monitoring	
Section/page number	Comment
	See above
Mine Closure	
Section/page number	Comment
	See above

Ground Control in Open Pit Mines	
Section/page number	Comment
	See above
Ground Control for Underground Mines	
Section/page number	Comment
	See above
Underground Winding Systems	
Section/page number	Comment
	See above