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MODEL WORK HEALTH AND SAFETY MINES CODES OF PRACTICE

SUBMISSION TO SAFE WORK AUSTRALIA

MINERALS COUNCIL OF AUSTRALIA with

- Victoria Division of the MCA
- Northern Territory Division of the MCA
- Tasmanian Minerals Council
- SA Chamber of Mines and Energy
- Queensland Resources Council
- NSW Minerals Council
- Chamber of Minerals and Energy WA

7 OCTOBER 2011

About this submission

The Minerals Council of Australia, as the peak national body representing the Australian minerals industry has brought together the views of its members and all State/Territory minerals industry bodies in developing this submission.

This Submission is made by the Minerals Council of Australia (MCA) in conjunction with the:

- Victoria Division of the MCA
- Northern Territory Division of the MCA
- Tasmanian Minerals Council
- SA Chamber of Mines and Energy
- Queensland Resources Council
- NSW Minerals Council
- Chamber of Minerals and Energy WA

This submission makes comment on the draft Mines Codes of Practice and complements the previously made submission on the Model Work Health and Safety Mines Regulations submission.

This submission should be read in conjunction with the Mines Regulations submission as where we recommend amendments to the Mines Regulations this will flow on to the content and language of the Mines Codes. CMEWA prepared its own submission on the Mines Regulations as its views on how the harmonised regime should be implemented diverged from the views held by MCA and the other representatives on the subject.

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1 GENERAL COMMENTS

1.1 Role of Codes

The MCA and Representatives support the position taken by Governments that Codes of Practice under the Model WHS regime do not represent the only way to demonstrate compliance with the law. Codes of Practice become dated the day they are published. This is most evident in technically advancing industries like the minerals industry. Some risks may have a single obvious control however there are typically many ways to manage risks in the minerals industry. Particularly where there are overlapping or cumulative risks between health and safety and environment. Codes that are Compliance Codes – where compliance with a Code represents compliance with the law can impede innovation and continual improvement in risk management.

The use of mandatory language inconsistent with the Mines Regulations is inappropriate and should be deleted or amended. The terms “should include at least”; “should include at a minimum”; “should consist of at least” imply mandatory requirements which is inconsistent with the Mines Regulations. The use of the terms “effectively manage” or “effectively control” are subjective and unhelpful.

It is necessary that the Codes of Practice include some form of categorisation of language that reflects common usage and dictionary definitions. It is interesting to note, the Macquarie Dictionary defines the word ‘should’ as 1: *indicating obligation*; and 2: *indicating advisability*. When looking at the difference between a legal obligation and a recommendation, the difference between ‘*indicating an obligation*’ and ‘*indicating advisability*’ are quite notable. The Codes of Practice should be very clear on what the intended meaning of the language is to ensure the interpretation the Codes of Practice is consistent with the intent and consistent with the legal requirements.

The examples in the Code of Practices (where compliance is optional), while useful, should predominantly be moved into other guidance material. It is not appropriate for optional examples (that may not be widely accepted or adopted in industry) to be elevated to the status of evidence of what is known about a hazard, risk or control in court proceedings.

There are references to other guidance material throughout many Codes of Practice. Unless the ‘other guidance material’ referenced is another Codes of Practice, it is presumed the other guidance material will not have the same legal status of the Codes of Practice and will not, by virtue of being referred to in a Code of Practice, be automatically admissible in legal proceedings as:

- Evidence of what is known about a hazard, risk or control
- Evidence for determining what is ‘reasonably practicable’ in the circumstances to which the Code of Practice relates.

1.1.1 Scope and applications

The Industry believes that the scope and application of Codes must be clear and consistent across the range of Codes. It appears some Codes are confused regarding their role – they should be about how to **comply** not how to **manage** risks.

For example:

- The Roads and Other Vehicle Operating Roads states that it “provides practical guidance on how to *manage* roads and other vehicle operating areas...”
- The Ventilation in Underground Mines Code incorrectly states the Code provides advice on determining what is reasonably practicable. There is an interpretive guidance document on what constitutes what is reasonably practicable. Whilst section 275 of the Model Act states a Court may rely on a Code as evidence of what is reasonably practicable in the circumstances; this is not the **purpose** of the Code. The purpose is to provide practical guidance on how to comply with a duty.
- The Survey and Drafting Code states that “By following this code a detailed plan can be developed which complies with the legal requirements”. This is misleading as following the Code does not represent compliance with the law.

1.1.2 Content and structure

A number of the Mines Codes are clearly guidance material and do not constitute ways of achieving compliance with the law. These should be labelled as such or rewritten to provide practical guidance to achieve compliance. We reject the often stated notion that guidance material is inadequate in assisting operators manage risk – such material still represents a 'body of knowledge' that can be utilised by duty holders in achieving compliance and also assist in determining what is reasonably practicable under the law.

The Codes are structured in a raft of ways – most, simply have a conversation around hazard and risk without providing any practical guidance on how to comply with specific regulations. There are also numerous statements of fact or opinion that provide no practical value.

It is not appropriate that legislative requirements have been paraphrased (often inaccurately) without proper identification or reference to the Model Act or Regulations.

It is important to note that if it is not reasonably practicable to comply with the guidance in the Code of Practice, then the content is not appropriate. These Codes of Practice will be used as evidence of what is/was reasonably practicable in the circumstances hence, their content should reflect this.

We support the use of boxes to highlight the specific regulations in the Code as they relate to the content of the Code.

1.2 Inadequacy of time to respond to very technical Codes

Mining is a specifically regulated industry under the Model WHS Regulations. The industry has some specific risks that require a very detailed and technical understanding. The three Codes on ground control and the Code on Winders are examples of this. We acknowledge that various State Regulators collated existing information in preparing these Codes. However through this process it is clear that a greater level of technical input into the drafting is required.

The Australian industry benefits from having international renowned technical experts to assist in the redrafting of these Codes. The MCA and Representatives therefore strongly recommend that these Codes be revisited by a roundtable convened by SWA. If these Codes were finalised now they would simply not represent industry practice and would therefore be of no practical use to the minerals industry.

Given that the Stage 2-4 Codes to support the Model Regulations will not be finalised by 1 January 2012 there should be no urgency in finalising what are very technical Codes for the mining industry. Urgency will simply result in poor outcomes.

A second consultation period to properly engage with technical and operational experts is required once the first draft of the Mines Regulations and Codes of Practice have been reviewed and updated following the initial public comment period.

1.3 Relationship with other Model Codes

The MCA and Representatives acknowledge that a Traffic Management Code is being developed for all industries. The Road and Other Vehicle Operating Areas Code will need to be consistent with that Code; therefore further drafting may be required.

We also understand that a Health Monitoring Code is currently being developed for all industries- again health monitoring for the mining industry must be commensurate with other industries.

The MCA and Representatives do not support an additional Code to assist with compliance in managing radioactive materials. The Australian Radiation Protection and Nuclear Safety Authority (ARPANSA) is the clear lead in managing these risks. Furthermore the ARPANS Act 1998 is Commonwealth law and 'covers the field' meaning it is the principal Act. This is even stated in the 'Scope and Application' part of the draft: *"In the event of any conflict between this Code and that of the ARPANSA legislation, the latter will take precedence."*

1.4 Codes extending beyond Work Health and Safety

There is a significant overlap in Survey and Drafting Code to what is required under other mining law – with respect to licencing arrangements, tenement management, public safety and environmental management. The current content is far broader than work health and safety.

Similarly, the Code on Mine Closure involves a process that extends far beyond work health and safety. This Code must only focus on the safety and health impacts while closing the mine – nothing else. The Mine Plan covers the life cycle of the mine including decommissioning and closure

1.5 Removal of existing Codes where appropriate

The MCA and Representatives acknowledge that there is a commitment by State and Territory Regulators to remove local Codes of Practice and guidance material from the public domain when National Codes are finalised. We understand that this will take time given the staged approach to drafting and finalising Codes under the Model regime. We do however seek reaffirmation of this commitment, as evidence by withdrawing redundant material as new National Codes become available.

2. MODEL CODES OF PRACTICE FOR MINING

Public Comment Response Forms

Section B: Model Mines Codes of Practice

Model Work Health and Safety Code of Practice for Mining - Public Comment Response Form

Individual/Organisational name: MINERALS COUNCIL OF AUSTRALIA and Representatives	
Codes of Practice	
Roads and Other Vehicle Operating Areas	
Section/page number	Comment
Overarching	<p>The MCA and Representatives acknowledge that a Traffic Management Code is being developed for all industries. This Mine Code will need to be consistent with that Code; therefore further drafting may be required.</p> <p>There is inappropriate use of mandatory language throughout the Code which is inconsistent with the Regulations.</p> <p>Numerous statements of fact are contained in the Code without providing any compliance information.</p>
Scope and Application	<p>The Code is confused regarding its role – it should be about how to comply not how to manage roads and other vehicle operating areas. Codes relate to the Regulations. Guidelines provide advice.</p> <p>The Code is about interaction “in mines”, not “around mines”.</p>
1.1 (p5)	It must be made clear that a road is defined for the purposes of the Mines Regulations and that this may differ from a road defined in transport laws.
2 (p6)	<p>This section is redundant and dealt with in the How to Manage Risks Code of Practice.</p> <p>The last paragraph and dot points relate to risks not hazards so should be included in the next section.</p>
3 (p7)	Last paragraph states that a risk assessment must be undertaken with a <i>cross section of workers</i> . This is inconsistent with the consultation provisions of the Regulations

4 (p8)	The box will need revision following the changes to the risk management provisions of the Regulations.
4.1 (p8)	<p>The second paragraph is an unnecessary statement.</p> <p>The list under the heading ‘Prevailing weather and environmental conditions’ includes “vehicle operating speeds” – surely this is not a consideration when determining how to construct the road. The speeds will in fact be determined by the road.</p> <p>For clarity, primary roads and secondary roads should be described i.e. the term ‘primary roads’ should be defined as haulage roads regularly used as part of the mining process. The term ‘<i>secondary roads</i>’ should be defined as access and working roads used or regularly changed as part of the mining process.</p> <p><i>Terrain and geotechnical considerations</i> This section states that when designing and establishing mine roads, the terrain and geotechnical issues must be taken into account. The Regulations state that when developing control measures to manage the risks associated with roads and other vehicle operating areas ‘<i>the impact of road design and characteristics, including grade, camber, surface, radius of curves, intersections</i>’ must be taken into account.</p> <p>It may be that the phrase ‘terrain and geotechnical issues’ is intended to broadly contemplate the terms identified in the Regulations, however this is not clear. To avoid confusion and for alignment with the terminology in the Regulations, the Code of Practice should be amended to accurately state the requirements in the Regulations.</p>
4.1 (p9)	<p>Under the heading <i>Road widths</i> is the statement that “For surface operations, each lane of travel should be at least 1.5 times the width of a vehicle.” This is not prescribed in regulations and may not be practicable in all situations. The same applies to the reference to 3.0 times for a two lane road.</p> <p>With regards to underground operations a width of 1.5 times is clearly impractical and contradicts industry practice.</p> <p>Under the heading <i>Road gradients</i> there is a liberal use of the term ‘must’ which implies mandatory under law. This is incorrect.</p> <p>Reference to two-way traffic road, instead of two lane as there are no distinct lanes in opencast or unsealed roads.</p>
4.1 (p10)	Again there is a list that indicates a range of things ‘must’ be considered. This is not consistent with the regulations.
4.1 (p11)	<p><i>Edge protection</i> appears limited to haul roads; further information regarding other vehicle operating areas is required.</p> <p>There is information regarding overhead powerlines and structures, this should be expanded to include underground services and structures.</p>

4.1 (p12)	The section on <i>workshops and fixed plant areas</i> should be extended to consider walkways.
4.3 (p13)	This section does not adequately consider physical barriers as a higher order control.
4.4 (p13)	Again the use of mandatory language is inappropriate. In paragraph two it is recommended that physical barriers be moved up the list as a higher level of control than signage. This section should include refuelling areas, hazardous chemical and explosives stores.
4.8 (p15)	The use of language “at a minimum” implies mandatory actions which is incorrect.
4.9 (p15)	It would be useful to acknowledge the importance of universal signage (colour and symbols).
5 (p16)	This section states that workers using the road or vehicle operating area and their HSRs must be consulted and the questions identified considered when undertaking a review of control measures. There are consultation obligations under the Model Act and Regulations clause 9.4.2. This section appears to refer to these obligations, though does not specifically identify any legislative requirement- nor qualify the duty with ‘as far as is reasonably practicable’. Any legislative requirement must be clearly identified and accurately stated. While the obligation to consult can extend to matters including a review of risk control measures, there is no legal requirement for the questions outlined in the Code of Practice to be addressed. As the requirement outlined in the Code of Practice is not a legislated requirement it is not appropriate to use the language of ‘must’. This should be amended to ‘may’ or ‘should’.
Managing Naturally Occurring Radioactive Materials in Mining	
Section/page number	Comment
Overarching	The MCA and Representatives do not support an additional Code to assist with compliance in managing radioactive materials. The Australian Radiation Protection and Nuclear Safety Authority (ARPANSA) is the clear lead in managing these risks. Furthermore the ARPANS Act 1998 is Commonwealth law and ‘covers the field’ meaning it is the principal Act. This is even stated in the ‘Scope and Application’ part of the draft: “ <i>In the event of any conflict between this Code and that of the ARPANSA legislation, the latter will take precedence.</i> ” The harmonisation of radiation protection in Australia has already happened – the fact that all States and Territories adopted (or in the

	<p>process of adopting) the ARPANSA Code of Practice for Mining and Mineral Processing (2005) is not taken into account;</p> <p>The fact that ARPANSA Safety Guide on Management of Naturally Occurring Radioactive Material (NORM) is already in existence for nearly three years (since August 2008) and its direct applicability to mining and mineral processing is not even mentioned</p> <p>There is no reference anywhere in the document to the latest ARPANSA Safety Guide on Monitoring, Assessing and Recording Occupational Radiation Doses in Mining and Mineral Processing (RPS-9.1, June 2011).</p> <p>There is considerable agreement amongst radiation professionals and the industry that a single national code is required and that this should be the ARPANSA Code.</p> <p>MCA repeatedly asked the Commonwealth Government to engage with APRANSA in developing the Mines Regulations and the Code – unfortunately this did not occur and we are now left this with untenable situation.</p> <p>The Code furthermore confuses what is required under APRPANS Act and what a Principal Mining Hazard Plan under the WHS Mines Regulations should contain.</p> <p>Australia has numerous international experts in the management of NORMs and the comments that they make in submissions on this Code of Practice must provide the foundation of any work going forward.</p>
The Mine Records	
Section/page number	Comment
Overarching	<p>This Code is redundant. It provides no information beyond what is contained in the Regulations. The WHSM Code contains detail on the mine record.</p> <p>MCA and Representatives question the utility of a Code that paraphrases (sometimes inaccurately) the requirements of the Regulations.</p> <p>We reiterate our concern regarding the mine record provisions in the Regulations and in particular the provisions requiring a mine operator to maintain recorded of investigations into incidents (and make this information available for inspection).</p>

WHS Management Systems in Mining

Section/page number	Comment
Overarching	<p>This Code is the foundation document to support the Mines Regulations. Of all Codes, this Code most reflects the intent of Codes of Practice i.e. to provide advice on compliance. However there are some clear areas where the Code does not accurately reflect the Model Mines Regulations and will also need to be updated to reflect amendments to the broader regulations with respect to risk management and information and training.</p> <p>At any point where the word ‘must’ is used it needs to have a specific reference to the Regulation. Otherwise ‘must’ can not be used in a Code where it has no legal basis.</p> <p>Having said this, the Code will provide little practical use for most of the minerals industry.</p> <p>There also appears to be considerable repetition in this Code of Practice of content from other Codes (e.g. <i>Practice for Work Health and Safety Consultation, Co-operation and Co-ordination</i>). Repetition and duplication across Codes of Practice should be avoided. Where this occurs, the content across the Codes can become inconsistent (and confusing) over time- as some Codes are updated and others are not.</p>
Scope and Application	<p>MCA and Representatives consider that more information is required under the heading “What mining is covered by this Code?” A direct reference to the definition of <i>mine</i>, <i>mining operation</i> and <i>mineral</i> is required.</p> <p>The interpretation of the word ‘should’ as being a recommended action quickly leads the reader to assume that the course of action recommended is ‘best practice’ when for the same reason that these Codes do not represent compliance, there is invariably more than one course of action that can be taken. The interpretation that ‘may’ indicates an optional course of action is also misleading as all information within Codes under the WHS Act are optional if an operator so determines that an alternate action will lead to an equal or better way of managing risks. These comments apply to the Scope and Application for all the Mines Codes of Practice.</p>
1 (p5)	<p>Of the 4 dot points listed under Duties, only 2 are specific to the minerals industry. Point 2 and 4 are common to all industries so the statement that these duties are specific only to a mine operator is incorrect.</p> <p>The information about consultation appears to paraphrases the consultation obligations in the Model Act and Regulations. However these obligations are not accurately stated and there is no reference to the overarching consultation duties being qualified by ‘as far as is reasonably practicable’.</p>
2.1 (p7)	<p>The first paragraph appears to paraphrase regulation 9.2.5. This legislative requirement should be accurately referenced and identified.</p>

	<p>The Code states that “A WHSMS allows the mine operator to demonstrate the management of health and safety on site.” In fact the WHSMS is not about demonstration it is about the systematic management of risks.</p> <p>The dot point regarding certification is not relevant to the Regulations and therefore to this Code. Certification for example through the International Organisation for Standardisation (ISO) is an entirely separate process. Retaining this dot point will confuse readers into believing they require some type of certification.</p>
2.2 (p7)	<p>The 4th dot point references new or unexpected hazards. Clearly if a hazard is unexpected it is not foreseeable and therefore impossible identify as a hazard. The term ‘new’ is sufficient.</p> <p>The second sentence of the second paragraph should refer to an ‘integrated system’ rather than a ‘single system’. The word ‘single’ may give the impression that only one system can be used to manage health and safety at a mine. This is not appropriate as most mine operators use an ‘integrated’ system (which comprises of different elements). Attempting to consolidate all systems into one can make the system more confusing and detract from safety outcomes. The integrated system can then be used to ‘provide a gap analysis’ of the elements in a coordinated manner.</p> <p>The ‘Managing principal mining hazards’ requires revision consistent with the comments made by the MCA and Representatives on the Mines Regulations to indicated that the PMHs are not in fact hazards, but represents a list of activities and hazards requiring specific attention.</p> <p>It is noted the requirement to document reasons for adopting or rejecting certain control measures is provided in regulation 9.2.11(2) and relates to risk assessments for the principal mining hazard management plan. This section does not require the plan itself to document all the reasons for adopting some controls and not others. The plan need only describe how the risk assessment was done and specify the results (9.2.11(3)). The bullet points in paragraph four in this section of the Code of Practice fail to distinguish between the risk assessment requirements and the principal mining hazard management plan requirements. This section should be redrafted to accurately reflect the legislative requirements. It is presently confusing and potentially misleading.</p>
2.3 (p8)	<p>This section mixes up the mandatory components of a WHSMS and other components that a WHSMS may have. This should be restructured to clearly delineate what is mandatory and to ensure legislative requirements are not overstated.</p> <p>Under point 6. Crisis management is an operational issue beyond safety and health so is likely to be addressed elsewhere.</p> <p>As the WHS management system is only part of the overall management system for running a mine, the action plan for implementation should not be included in the WHS management system.</p>
2.3 (p9)	<p>Using the words “to be effective, a WHSMS could” before a list of options is not appropriate. The section should simply state the options a mine operator may choose to adopt for the collation of information relating to the various elements WHSMS.</p>

Figure 2 (p10)	The box entitled Obligations includes 'community'. This is a broad term and is misleading in implying the 'community' be consulted on the WHSMS . What is meant, we expect, is that the WHSMS should acknowledge the safety and health impacts of the mining operation to the community surrounding the mining operation. This does not extend into public safety not as a result of mining operations.
3 (p11)	3 rd paragraph "the WHSMS should....." is a repeat of text in 2.1.
3.1 (p11)	<p>The first paragraph refers to the "required level of work health and safety". What does this mean? Surely the requirements are those defined in the WHS Act.</p> <p>Third paragraph states "the WHSMS must be sufficient to ensure....." This language is not appropriate and uses mandatory terminology (with no direct legislative reference). The sentence itself provides no practical guidance.</p> <p>The acknowledgement that there are numerous systems that can interact and overlap is welcomed. This extends to systems that are not safety and health focused – i.e. environment, community, training.</p> <p>Paragraph 5 "....such a plan should at least...." implies a minimum level which can be interpreted as mandatory level whereas the regulations do not stipulate this leading to confusion.</p> <p>It is not appropriate to state in a Code of Practice that incorporating certain elements in a WHS management system will cover WHS requirements. This language suggests that the requirements listed (which are not referenced in any detail) will be satisfied by a WHS management system that contains the recommended elements. This is not the case. Compliance with a Code of Practice is not automatic compliance with the Model Act or Regulations and the language of the Code of Practice should not give this impression.</p>
3.2 (p12)	<p>The Code states that Workers should be involved in:</p> <ul style="list-style-type: none"> • Monitoring procedures for the health of workers. <p>Workers are not likely to be able to monitor procedures that are medical in nature.</p> <p>The consultation content of this Code of Practice should refer to the relevant legislative provisions (e.g. section 48 of the Model Act) and be qualified by 'as far as is reasonably practicable'. This qualification is not made clear here.</p>
3.3 (p12)	Communicating the WHS policy to community groups is puzzling and its purpose is not clear.
3.4 (p13)	"Creating and implementing an action list is essential....." Essential implies mandatory when in fact there is no legal requirement for this.
3.5 (p13)	<p>This section relates to Risk Management not Hazard management.</p> <p>Our comments regarding the term "unexpected hazards" are made earlier.</p>

3.5 (p14)	The industry has long moved on from using JSAs as the tool to use to identify hazards. There are numerous more effective ways to identify hazards and manage risks.
4.1	<p>The Regulations state that the Mine Operator has a duty to develop the WHSMS; a 'representative' is not a legal concept.</p> <p>This section states that the representative of a mine operator will be an officer for the purposes of section 27 of the Model Act. The question of whether a person/representative of the mine operator is an 'officer' for the purposes of section 27 will turn on the facts of each circumstance. It is not appropriate for the Code of Practice to draw this conclusion.</p> <p>Section 27 of the Model Act should also be extracted here.</p> <p>This section refers to obligations under the Model Act. The relevant legislative provisions should be accurately stated here and clearly identified.</p>
4.2 (p15)	This is about Risk Management not Hazard Management.
4.2 (p17)	Under the heading Risk Assessment, there is a reference to likelihood and severity; as discussed in the MCA and Representatives submission on the Mines Regulations this is a mathematical calculation and is not useful in categorising risks.
4.2 (p18)	The text under the heading Controlling Risks needs to be drafted consistent with the new Risk Management provisions in the Model Regulations.
4.3 (20)	This section should simply refer to the Emergency Response at Australian Mines Codes of Practice.
4.4 (p20)	This Section should refer to the Consultation Code of Practice on only describe what additional requirements sit under the Mines Regulations.
5.2 (p23)	<p>The second and third sentences should be amended to provide that:</p> <ul style="list-style-type: none"> – any incident (an unplanned event having at least the potential for injury, ill health, damage or other loss) <i>may provide</i> evidence that the selected controls are not adequately controlling the risk which in turn triggers the need to review them and the WHS management system: – It therefore recommended that all significant incidents are investigated including near misses. <p>It is not appropriate for a Code of Practice to state it is <i>essential</i> that certain incidents get investigated.</p>
5.3 (p24)	The fourth paragraph lists 'changing community expectations' as information to assist in a review. The basis for this inclusion is unclear.

	Community expectations about health and safety obligations are reflected in WHS legislation- which already provides a high threshold for WHS standards.
Appendix A	This will require amendment in line with the Mines Regulations.
Inundation and Inrush Hazard Management	
Section/page number	Comment
Overarching	<p>This Code over emphasises the ‘thickness’ of strata when in fact ‘strength’ is a much better consideration.</p> <p>The document is poorly structured with points repeated many times. The structure Code should be reconsidered to ensure it is easy to understand, logical and not repetitive. Some content in the Code may be simplified through the use of diagrams.</p>
1.1 (p5)	You can get engulfed by gas, but not inundated.
1.2 (p5)	<p>The first and second paragraph set out legislative requirements under the Model Act and Regulations. Paraphrasing of legislative requirements should be avoided.</p> <p>The third paragraph contains the word ‘must’ but is not referring to any legislative requirement. The word ‘must’ not be used.</p> <p>TARP is only one way to manage risks. Emphasising this tool is not helpful and detracts from the practical application of the Code.</p>
1.2 (p6)	<p>This section states <i>‘when managing risks, the mine operator must consult with workers and other persons at the mine including other persons conducting a business or undertaking’</i>.</p> <p>While there is a duty to consult under the Model Act, that duty is qualified by ‘as far as is reasonably practicable’. The language in this section should not represent a qualified duty as an absolute duty.</p>
2.1 (p7)	This section provides very useful information. However the these are conditions that may arise rather than hazards. The connection between <i>‘unstable strata and ground unravelling’</i> is unclear and should be explained further.
2.5 (p11)	<p>This section states: <i>If no hazard is identified, the reasoning must be documented. If an inrush hazard from a non mining, man-made structure has been identified, the safety barrier must be determined. All information should be integrated into the current mine plan with appropriate control zone’</i>.</p> <p>This section uses mandatory language (must) twice without any reference to a legislative requirement. The language needs to be amended to</p>

	refer to a recommendation or specify the relevant legislative requirement.
3.1 (p12)	This section provides: ‘ <i>Assessing the risks will help the mine operator take the correct action to eliminate the risk or where this is not reasonably practicable, minimise the risks from inundation or inrush hazards</i> ’. Again, this appears to be paraphrasing a legislative requirement without clearly identifying it and including the appropriate qualifier- ‘as far as is reasonably practicable’.
3.2 (p12)	The use of “as a minimum” is inappropriate as it implies the list is mandatory.
4 (p14)	This section will require revision in line with the amended WHS Regulations.
4.1 (p14)	This chapter provides useful advice. The approach taken should be adopted across all Codes.
4.1 (p15)	Replace the word ‘standage’ with the more appropriate language of ‘storage’.
4.1 (p16)	<p>Prescribing a 50 meter barrier is not appropriate – the risk management control of strength is preferred. Recommend language around maintaining adequate strength of strata to manage the risk of inundation and inrush.</p> <p>The appropriate separation distance will depend on the individual circumstances. Specification of particular measurements can encourage people to focus on the specifications rather than take a more holistic risk based approach- which is preferred.</p>
4.2 (p16)	TARP is only one way to manage risks. Emphasising this tool is not helpful.
5.1 (p18)	The final sentence in this section states: ‘ <i>Therefore a substantial zone of impermeable rock must exist between the workings and the rockhead</i> ’. The word ‘must’ is not appropriate.
6 (p20)	<p>The reference to regulation 9.2.4 should not be paraphrased.</p> <p>The following sentence also provides that in undertaking the review, workers and their health and safety representatives must be consulted and the following questions be considered. The language here does not accurately reflect the legislative requirements including the fact that consultation duties are qualified by ‘as far as is reasonably practicable’. The language in this section should be amended.</p>
9.1 (p24)	The term “required at a scale of 1 in 4000” is inappropriate and inconsistent with the Mines Regulations.
9.2 (p24)	This section is not consistent with the Mines Regulations.
Appendix B	These flow charts are useful.

Emergency Response in Australian Mines

Section/page number	Comment
Overarching	<p>The use of boxes to highlight the legal requirements is supported and should be incorporated in all Codes. However using boxes to make statements detracts from the Code and is confusing for readers.</p> <p>References to legislative requirements should be accurately stated and clearly identified. Legislative requirements should not be paraphrased.</p>
Scope and Application	The Code <u>does not</u> provide guidance on how to respond to an emergency – it provided advice on how to comply with the emergency management provisions of the Regulations.
1.1 (p6)	<p>The first paragraph should not be boxed.</p> <p>The section on consultation needs to include information on how a State/Territory's Emergency Management laws apply and how emergency plans under the WHS Regulations interact.</p>
1.2 (p7)	The last paragraph does not make sense. What is intended?
2.1 (p8)	The third dot point needs to be updated to reflect the regulation.
2.1 (p9)	<p>The third paragraph commencing with “The emergency plan should also.....” includes the concept as far as reasonably practicable – this is not required as it is not a mandatory list.</p> <p>Dot point 6 refers to industry health and safety representatives. The Regulations do not say this – they are HSRs and not industry HSRs (who in some OHS laws are union officials).</p>
4 (p11)	<p>Linkages to State/Territory Emergency Management laws need to be referenced including who is the incident controller in specific incidents.</p> <p>“An organisation chart just for use during emergencies must....”. This is not a mandatory requirement.</p>
4.1 (p12-13)	<p>Information related to the establishment of ICTs may be determined by Emergency Management laws. How they interact with mine site control rooms needs to be explained.</p> <p>There is a lot of mandatory language used in this section that is not appropriate (as it does not directly align with a legislative requirement):</p>

	<ul style="list-style-type: none"> – Section 4.1 states that critical information must be conveyed and must be accurate. This is not a direct legislative requirement and therefore it is not appropriate to use the language of ‘must’. – Section 4.1 requires that where there is no control room someone must be the nominated person to take the initial call when an emergency incident occurs and that this person must be trained in this function. This is not a direct legislative requirement and therefore it is not appropriate to use the language of ‘must’. – Section 4.1 states all persons at a mine site must be trained to know the dedicated emergency number, who to contact and the manner and content of information to provide. As this is not a direct legislative requirement it is not appropriate to use the language of ‘must’. – Section 4.1 states control room operators/dedicated persons must be able to initiate a full emergency response and initiate and monitor the withdrawal of persons to a place of safety. This is not a direct legislative requirement and therefore it is not appropriate to use the language of ‘must’ – Section 4.1 states effective communication is of critical importance between the incident control team, control room, management, HSRs and external agencies and that this communication must be planned for prior to emergencies. As this is not a direct legislative requirement it is not appropriate to use the language of ‘must’.
5 (p14)	<p>The first paragraph states that mine operators must develop a procedure for the ‘prompt notification of the regulator as well as any local, state and any other relevant emergency services’. The Regulations state that, in the event of a notifiable incident or an event that could reasonably be expected to lead to a notifiable incident, a procedure is required for notifying the following:</p> <ul style="list-style-type: none"> – Any person whose health and safety may be affected (even if the person is underground; or there is no electrical power that can be used for the notification); and – The emergency services in circumstances where emergency services are required. <p>The Code of Practice should be amended to accurately state the legislative requirement as outlined above.</p>
5.1 (p14)	<p>Section 5.1 states the Emergency Plan must be available, written in plain and simple language, use simple flow charts, diagrams and pictures and be accessible to people at the mine. The Regulations state the Emergency Plan must be ‘<i>documented and set out and expressed in a way that is readily accessible and comprehensible to people that use it</i>’.</p> <p>As the Code of Practice does not currently express the legislative requirement, it is not appropriate to use the language of ‘must’. Applicable legislative requirements should be accurately stated and clearly identified.</p>
5.2 (p14)	<p>This section details a whole list of ‘must ensures’ which is incorrect as Schedule 9.4 defines what is required with regards to communication in emergencies.</p> <p>Once again, the applicable legislative requirements should be clearly identified and accurately stated.</p>

6.2 (p15)	The Regulations provide that persons must be trained in the use of and are able to use the self rescuers provided. This requirement should be clearly identified as a legislative requirement in the Code of Practice.
6.3 (p15)	<p>Section 6.3 states a mine operator must provide equipment sufficient and appropriate for extinguishing any potential fire. This requirement should be based on the outcomes of a risk assessment and controlling and/or minimising the risks to people.</p> <p>This requirement as stated in the Code of Practice appear to be an adaptation of the obligation from the general Regulations which relates to fires as a result of hazardous chemicals. The Regulations for mines also require the Emergency Plan to include details regarding emergency equipment and personnel. Once again, the applicable legislative requirements should be clearly identified and accurately stated</p> <p>Section 6.3 also states the mine operator must make adequate provision for water storage, water pressure and reticulation to suppress any potential fire in a surface or underground mine. They must also ensure the water storage, pressure and reticulation is inspected and tested to enable delivery of sufficient volume and pressure of water to extinguish a fire at or in a mine.</p> <p>It should be identified that water may not be appropriate for some types of fires. Further the Regulations require the Emergency Plan to include procedures and control points to be developed for utilities including water. Again, the applicable legislative requirements should be clearly identified and accurately stated. Alternatively, the word 'should' should be used instead of 'must'.</p>
6.4 (p16)	This section is incorrect - the appointment of these persons is not a regulatory requirement.
6.5 (p16)	The list of 'musts' is incorrect – there is no legal requirement; instead the list represents what compliance might look like.
7 (p17-21)	This Chapter provides very useful information. The section on triggers provides important issues for consideration.
7.6 (p20)	Section 7.6 specifies the requirements for a place of safety following an evacuation, i.e. must be appropriate given the hazard initiating the evacuation and must have an effective means of communication. The use of mandatory language here is not appropriate as the information does not directly reflect a legislative requirement.
7.10 (p21)	<p>This section needs to explain that re-entry may be determined by the Regulator i.e. the site released.</p> <p>Paragraph 5 lists a number of 'requirements' which incorrectly implies they are mandatory when they are not.</p>
7.11 (p22)	This section states an appropriate alarm must be communicated to persons who may be endangered (i.e. when conditions of potential or imminent emergency requiring escape from a mine are identified). The Regulations require that the Emergency Plan include details regarding on site and off site warning systems and on site communication systems. As the requirement in the Code of Practice does not directly reflect the legislated requirement, it is not appropriate for the language to use 'must'. Alternatively, the relevant legislative requirement should be clearly identified and accurately stated.

7.13 (p23)	<p>Section 7.13 outlines the requirements regarding self-rescuer apparatus procedures, in particular persons underground must be provided with respiratory protection apparatus to allow safe egress from the mine through any irrespirable or irritant atmospheres.</p> <p>The Regulations require any person who goes underground must be provided with a self-contained rescuer and that the person must be trained in the use of and is able to use the self rescuer. Further the Code of Practice states the sufficient numbers of self rescuers with the capability of providing oxygen must be available at change over points. The Code of Practice does not accurately state the legislative requirements. As such, the mandatory language is not appropriate.</p>
7.15 (p23)	The words 'need' and 'must' are used in this section - with no direct link to a legislative requirement. Any legislative requirement must be clearly identified. It is not clear what legislated requirement this section relates to, it is not appropriate to use the language of 'must'. This approach would also be consistent with the terminology in the remainder of this section.
7.18 (p25)	<p>The <i>Note</i> part way down the page indicates it is preferable that the second means of egress can be drive. As discussed in the MCA and Representatives submission on the Mines Regulations, this is not practical.</p> <p>This section also uses mandatory language without any direct link to a legislative requirement. The relevant legislative requirements should be accurately extracted here (and clearly identified) or the mandatory language removed.</p>
7.19 (p26)	The second paragraph states that the procedure for sealing a mine should <i>ensure</i> a range of things. This is not a requirement of the regulations and the list is therefore not mandatory.
7.20 (p26)	As with 1.19, "should ensure" is incorrect.
Strata Control in Underground Coal Mines	
Section/page number	Comment
Overarching	This Code of Practice applies to underground coal mines and covers the necessary content to deal with strata/ground control in underground coal mines. The <i>Code of Practice- Ground Control for Underground Mines</i> appears to have a non-coal/metalliferous focus – there is a risk that these Codes will provide guidance in conflict with each other.
1.2 (p4)	This part provides that ' <i>To effectively control the risks, the mine operator must follow a risk management process and prepare and implement a hazard management plan which is included in the WHS management system (WHSMS)</i> '. This appears to be an interpretation of the Regulations, and Model Act and Regulations. Paraphrasing legislative duties (particularly when the duty is qualified by 'so far as is reasonably

	<p>practicable’ and this is not noted in the Code of Practice) is not appropriate. References to legislative requirements should also be clearly and accurately stated.</p> <p><i>Consultation</i> This section states ‘<i>when managing risks, the mine operator must consult with workers and other persons at the mine including other persons conducting a business or undertaking</i>’. While there is a duty to consult under the Model Act, that duty is qualified by ‘as far as is reasonably practicable’. The language of these sections should not represent a qualified duty as an absolute duty and should accurately identify the legislative requirement.</p>
2.2 (p5)	<p>This section will require revision following amendments to the Mines Regulations.</p> <p>The use of the term “so far as reasonably practicable” when not a legal requirement is odd.</p> <p>This section also lists a number of matters that the principal mining hazard management plan for strata instability should make provision for. There is some mandatory language (e.g. ‘required’) included in the description of these matters (e.g. <i>means of roadway support required to be installed</i>). This language should be reviewed as the Code of Practice cannot impose requirements- it can only state legislative requirements.</p>
3.4 (p14)	<p>This part should be titled ‘<i>Hazard Plan</i>’ as it talks about strata hazards. The references to ‘risks’ should be amended to ‘hazards’.</p>
3.5 (p15)	<p>The words ‘<i>both components must be carefully considered</i>’ are inappropriate. The language of ‘must’ should not be used.</p> <p>This part should focus on a review of the relevant controls within the principal mining hazard management plan- should the conditions specified in this part (e.g. a significant deviation from the expected conditions) occur. This is because it may not be necessary or appropriate to review an <i>entire plan</i> when there is deviation in expected conditions or if there is a rib fall incident.</p>
3.6 (p10)	<p>It is recommended that the rules should be separated to reflect different aspects of strata control. That is, the first list should contain elements common to all support rules and the second list pertaining to specific instances where particular hazards exist (due to the nature of work).</p>
3.9 (p15)	<p>The note in this section (last paragraph) states that ‘<i>advanced numerical techniques may be required to calculate the average pillar stress in these layouts</i>’. We suggests this section be reworded to state that advanced numerical techniques <i>may be used</i> to calculate average pillar stress and <i>if a mine operator were to use this technique</i> they should obtain the services of a competent person.</p> <p>Referencing a research document may not be appropriate nor recommending its use in a Code of Practice.</p> <p>The third paragraph, the final paragraph and the table in this section should be deleted. This table is considered out of date as it was devised 20 years ago and new data has been developed since. Whilst the general approach is supported, there should be a reference to ‘an</p>

	<i>appropriate risk based method of determining the factor of safety’.</i>
4 (p20)	The Code should not direct people on how to conduct an investigation into a notifiable event.
Appendix B (p25)	This is not appropriate as it clearly suggests that specific positions be appointed at the mine. The Model regime does not prescribe statutory holders.
Ventilation of Underground Mines	
Section/page number	Comment
Scope and Application	<p>This section incorrectly states the Code provides advice on determining what is reasonably practicable. There is an interpretive guidance document on what constitutes what is reasonably practicable.</p> <p>The Code is to provide guidance on how to meet the duty to manage ventilation in underground mines.</p> <p>The regulations in the Mines Regulations on ventilation, air quality, air monitoring are haphazard and the MCA and Representatives make numerous suggestions to improve the regulations in the submission on the Model Mines Regulations.</p> <p>A large part of this Code represents explanatory information and guidance rather than ways to comply with the regulations.</p>
1.2 (p5)	The first box is unnecessary duplication. The second box is appropriate and links the Code to the specific regulations.
1.2 (p6)	<p>The concept of a ventilation control plan being one of the risks to highlight is not supported. The MCA and Representatives comments on the relevant section of the Mines Regulations can be found in that submission.</p> <p>See comments above regarding the paraphrasing of consultation duties.</p> <p>Any decision to alter the ventilation can only be made by persons with the appropriate competencies in ventilation and these decisions must be based on all of the information available not just what the workers want.</p>
2.1 (p7)	The language contradicts the draft Regulation. MCA and Representatives have made relevant recommendations to amend the Mines Regulations in its previous submission.
2.2 (p8)	The sections for each gas (e.g. oxygen, carbon dioxide, carbon monoxide etc) contain information about how the risks from particular gases are controlled. The general language used is ‘the risks of [insert gas] in a mine is controlled by’. This language, throughout the Code of

	<p>Practice, should be amended to read: ‘the risks to health and safety from [insert gas] in a mine may be controlled by’</p> <p>There are procedures for the management of risks arising out of carbon dioxide that are already covered for oxygen, methane and other gases. It more appropriate for the procedures required for all gases to be listed once and additional procedures for other specified gases listed separately (under the heading for the relevant contaminant).</p> <p>‘<i>The risk of CO₂ in a mine</i>’ should be changed to read ‘<i>the risk of unacceptable levels of CO₂ in a mine</i>’ or ‘<i>the risk from CO₂ in a mine</i>’ as low levels of carbon dioxide will always be present in most mines but the risk is acceptable. The same applies to CO, Methane, Hydrogen Sulphide, Nitrous Fumes, Hydrogen, Ammonia, airborne dust, DPM, and heat.</p>
2.4 (p18)	The last paragraph incorrectly states that a Working in Heat Management Plan ‘must’ be established. This is inconsistent with the Mines Regulations.
3 (21-25)	<p>Regulation 9.2.18 is not supported (please see submission on Mines Regulations). Some of the information in this chapter i.e. designing and managing a system can be redrafted.</p> <p>Under the heading <i>Fans</i> the Code recommends that a main fan should cut the power supply to booster and auxiliary fans. This is an unacceptable risk and mine operators would not contemplate this.</p>
3.1 (p21)	The mandatory language regarding the appointment of competent persons to ensure certain outcomes is inappropriate as this information does not directly reflect a legislative requirement.
3.2 (p21)	The mandatory language regarding the design of a mines ventilation system is inappropriate as this information does not directly reflect a legislative requirement.
3.4 (p23)	The second paragraph of this part states that fans ‘ <i>must be designed, constructed and installed</i> ’ to fulfil certain requirements. The use of mandatory language here is inappropriate as it does not reflect a legislative requirement.
Appendix A	<p>These terms must be cross checked against other terms in the Model Act, Regulations and Codes of Practice, particularly with regards to Health Monitoring, Confined Space and Hazardous Chemicals.</p> <p>The definitions of a ‘gas management plan’, ‘working in heat management plan’ and ‘spontaneous combustion management plan’ state that these plans are required under another Code of Practice. A Code of Practice should not require anything. Only the Model Act and Regulations can prescribe a requirement.</p>

Survey and Drafting Directions for Mine Surveyors

Section/page number	Comment
Overarching	<p>There is a significant overlap in this Code to what is required under other mining law – with respect to licencing arrangements, tenement management, public safety and environmental management.</p> <p>The risks are far broader than work health and safety.</p>
Scope and Application	<p>“By following this code a detailed plan can be developed which complies with the legal requirements”. This is misleading as following the Code <u>does not</u> represent compliance with the law.</p> <p>This section also provides that the Regulations require that mine operators ensure that a detailed plan of the mine is prepared by a competent person and kept at the mine. This appears to be paraphrasing the requirement to have a mine survey plan under the Regulations. This section should be redrafted to clearly identify the relevant legislative requirement and accurately state the law.</p>
1 (p6)	The first sentence is misleading as there are other ways to demonstrate compliance.
1.1 (p6)	<p>This is really about plans being accurately verified rather than being regarded with suspicion.</p> <p>The use of the word ‘danger’ is inappropriate – it is either a hazard or a risk.</p>
1.3 (p6)	“it is acceptable....”. By whom?
1.3 (p7)	“Nothing should prevent the Mine Surveyor.....” The point of this sentence is unclear.
2.3 (p8)	It is not appropriate for the Code to prescribe a standard (i.e. ICSM) when the Regulations don’t.
2.5 (p9)	<p>Second last paragraph – the Mine Operator has the duty not the Mine Surveyor (a non-statutory position).</p> <p>There is no legislative requirement to ensure the preservation of all survey records. It is also noted survey records are defined in the Code of Practice to include any plan, survey or spatial information required under this Code of Practice- which would include a large amount of information/documentation. The legislative requirement to retain mine survey information pertains to the retention of mine survey plans.</p>
3.2 (p11)	Place the relevant regulation in a box consistent with some of the other Mines Codes.

	<p>This is paraphrasing (inaccurately) a requirement in the Regulations- regulation 9.5.2 in relation to mine survey plan: <i>The mine operator of a mine must review and, if necessary, revise the mine survey plan:</i></p> <ul style="list-style-type: none"> <i>a) when there has been a significant mine modification; and</i> <i>b) at least every 3 months in relation to the parts of the plan that identify points of access, exits and refuges; and</i> <i>c) otherwise at least annually.</i> <p>Regulation 9.5.2 only requires a survey record to be updated (i.e. revised) if necessary, when the triggers for the review of the mine survey plan arise. Further, the reference to mine workings plan- as opposed to mine survey plan (as used in the Regulations) is confusing.</p>
3.3 (p11)	<p>This section states: <i>'In the case of an underground mine the Mine Workings Plan should comprise sheets for each Seam or Level, Cross Sections and Longitudinal Sections, and other layout data for the whole of the Mine as required by this code'.</i></p> <p>The language 'required by this code' is not appropriate and should be replaced.</p>
3.6 (p11)	Place the relevant regulation in a box consistent with some of the other Mines Codes rather than a list in text.
3.6 (p12)	<p>The use of 'required' in the second dot point is inconsistent with the Mines Regulations.</p> <p>This section does not clearly identify what plan content is required under the Mines Regulations and what is recommended or optional under the Code of Practice.</p>
3.10 (p13)	This is inconsistent with the Mines Regulations.
4.1 (p15)	The sentence <i>'The Mine Spatial Information should be prepared to the standards required by this code'</i> should be amended to use the word 'recommended' not 'required'.
4.2 (p15)	The use of the term 'minimum' is inappropriate as it implies mandatory.
6.1 (p17)	This is a regulatory requirement of the Mine Operator.
5 (p16)	This duplicates the Mine Closure Code.
6.2 (p17)	This is inconsistent with the Mines Regulations.
6.4 (p17)	This places a duty on the Mine Surveyor inconsistent with the Mines Regulations.
7 (18-21)	This Chapter duplicates other Codes and should simply reference these other Codes.

	This part talks about the plans that are ‘a minimum requirement’. The use of the words ‘required’ and ‘requirement’ is not appropriate <i>unless</i> there is a direct legislative basis for the requirement. This is not the case for all the ‘requirements’ set out in Chapter 7.
7.1 (p18)	This section refers to a mine manager or ‘other statutory official’. Individual statutory positions are not required under the Regulations. The references to ‘statutory official’ under this section should be revised. This point is also applicable to section 7.12 which also refers to a ‘statutory position’.
7.3 (p18)	This section states that: ‘Plans prepared under the guideline should be prepared in accordance with the standards required by this code’. The word ‘required’ should be replaced with ‘recommended’.
7.12 (p21)	The reference to ‘statutory position’ must be deleted as there are no such positions in the Mines Regulations.
8.2 (p22)	<p>This section states that ‘all objects in a theme should have attributes attached and be of the same feature type (e.g. point, line, or polygon). Each theme required is listed in Appendix A - Table 3 with corresponding attributes and feature types that should be used to represent the theme spatially’.</p> <p>The term ‘required’ is not appropriate. Appendix A can provide recommended themes but should not require certain themes be included in mine spatial information.</p>
8.4 (p23)	This section states: ‘Values for all attributes are required to be attached for all objects in the theme’. The phrase ‘are required to’ not be used.
Appendix A	It is presumed Appendix A is to provide guidance/recommendations for compiling and recording mine spatial information. However, the language in the Code of Practice is not clear on this. Appendix A should include an explanation of how the information in the tables is to be used and whether the tables include optional or recommended information (not mandatory).
Appendix B	These terms must be cross checked against other terms in the Model Act, Regulations and Codes of Practice.
Health Monitoring	
Section/page number	Comment
Overarching	We understand that a Health Monitoring Code is currently being developed for all industries. This Code should therefore be specific to any unique issues in mining operations that require health monitoring. This Code also references other SWA Codes that have yet to be released for public comment – following consideration of these Codes, the Mines Code will require revision.

	<p>The Mines Code should also seek not to duplicate the Codes related to hazardous chemicals and asbestos.</p> <p>The statement related to exceptions is unclear (also repeated in the Note on p20) and inconsistent with the Mines Regulations.</p>
Scope and Application	It is not appropriate to paraphrase the regulations here.
1.1 (p5)	<p>Rather than paraphrasing the regulation insert the specific regulation and place in a box to highlight.</p> <p>The section on managing risks focuses on inhalation risks at the expense of ingestion and absorption risks.</p>
1.1 (p6)	Reference to the specific regulations is recommended.
1.2 (p6)	<p>This section defines health monitoring as biological monitoring and medical examination – check where this comes from. Where is it stated in law that health monitoring includes counselling? The way in which counselling is referred to here is in fact information and training.</p> <p>“Health monitoring must not” Check where this is described in the Act or Regs.</p>
1.3 (p7)	This Code confers a status on the Australasian Faculty of occupational and Environmental Medicines brochures – this is not appropriate.
1.5 (p9)	This section will require updating following the suggested amendments made by the MCA and representatives to the Model Mines Regulations to enable their practicable application.
2.1 (p10)	<p>This section will need to be reviewed following the public release and finalisation of the hazardous chemicals and general health Codes.</p> <p>The list at the bottom of the of the page includes a ‘must’ this should directly reference the relevant Regulations and Schedule.</p>
2.2 (p11)	The boxed reference to the Regulation would benefit from the specific provision number.
3.2 (p14)	This section states that the mine operator ‘must’ provide certain information – this is not prescribed in regulations so is inappropriate.
3.6 (p15-16)	There appear to be a number of mandatory requirements listed in this section (contents of health monitoring summary report and confidentiality) that do not accurately reflect the Mines Regulations. This should be rectified and a distinction made between legislative requirements and recommendations.
4 (p17)	This section will need to be updated to include the recommended amendments in the MCA and Representatives submission on the Model Mines Regulations. Again this section appears to paraphrase legislative requirements (e.g. the obligations to provide a copy of the health

	monitoring summary). Legislative requirements should be accurately stated and clearly identified.
Appendix A	The terms “should include at least”; “should include at a minimum”; “should consist of at least” imply mandatory requirements which is inconsistent with the Mines Regulations.
Appendix B	Health Records are required to be kept for 30 years not 40 as stated in this section.
Appendix D and E	<p>A large amount of the content of these Appendices contains scientific, technical and other general background information regarding medical and other technical issues. This information would typically be obtained from an individual with relevant expertise in these areas. This scientific and other general background information would be better suited for inclusion in another reference/guidance document as opposed to a Code of Practice intended to provide practical guidance. There is also a risk that persons may seek to rely on this information without obtaining appropriate expert advice and/or use the Code of Practice as the sole source of information. Issues should be addressed on a case by case basis, with regard to appropriate expertise as required.</p> <p>The Appendices also incorporate some legislative requirements. We reiterate our general comments outlined above in this regard. These should be included in the main body of the Code in the first instance.</p> <p>The content regarding risk management and monitoring in relation to these issues could be included in a general section within the Code of Practice.</p> <p>Dermatitis and Heat Stress are not unique to mining and would be expected to be in the Health Monitoring Code of Practice for all workplaces and therefore do not need to be repeated here.</p>
Mine Closure	
Section/page number	Comment
Overarching	<p>Similar to the Code on Surveying, Mine Closure is a process that extends far beyond work health and safety. This Code must only focus on the safety and health impacts while closing the mine – nothing else. The Mine Plan covers the life cycle of the mine including decommissioning and closure.</p> <p>The Code rightly acknowledges the documents produced by the MCA and the former Ministerial Council on Minerals and Petroleum.</p>
Scope and Application	This incorrectly states that the Code should be used to minimise health and safety risks to the public – this strays beyond the intent of the WHS Act that limits the extension to public safety.

	This section also states a mine operator must not abandon a mine. While this is a legislative requirement (under the Regulations) it is not clearly identified as such.
1.1 (p5)	<p>The 3rd dot point does not adequately acknowledge sites that go into care and maintenance. Suspension implies a licence suspension.</p> <p>Language such as <i>'it is critical that as far as reasonably practicable the mine is left in a safe and stable state in line with agreed expectations of all relevant stakeholders'</i> is not appropriate language for a Code of Practice. Firstly, the words 'it is critical' are out of place in the context of a document providing practical guidance. Secondly the reference to 'agreed expectations' with all relevant stakeholders goes well beyond the scope of the Model Act and Regulations.</p>
1.2 (p5)	<p>Relinquishment of a mining tenement is not linked to the work health and safety duty – the Regulations determine when the safety duty ceases i.e. when there is no longer mining operations. Tenement relinquishment is under separate law.</p> <p>It is inappropriate to paraphrase a regulation and thereby change its intent – Regulation 9.2.31 is referenced incorrectly.</p> <p>The Code has incorrect references to a Ventilation Control Plan.</p>
2.1 (p9)	This section references a Guidance Note under WA law – it is not relevant here. Any information in that document should be included here if appropriate.
2.2 (p9)	This section references a Guideline under WA law – it is not relevant here. Any information in that document should be included here if appropriate.
2.3 – 2.13 (p9-11)	These sections don't relate only to mine closure. There are various regulations and Codes which cover these sections.
3 (p12-14)	The language flips between mine closure and abandoning mines. Mine closure is the appropriate term given that mines must not be abandoned (Reg 9.2.31(3))
3.2 (p12)	The statement that limited funding is normally available for abandoning mines is not correct. Mine closure plans are often accompanied by rehabilitation bonds which provide assurance that the work can be completed.
3.3 (p12-13)	This section is not relevant to work health and safety.
4.6 (p16)	The list is referred to "as a minimum" which implies it is mandatory which is inconsistent with the Regulation.

5 (p18)	Relinquishment is not a process under the WHS Regulations.
Appendix B	This case study is relevant to environmental law not WHS law.
Appendix C	This case study is not relevant to WHS laws – there is no mining operation.
Appendix E	This appendix will become dated very quickly as departmental names and responsibilities change.
Ground Control in Open Pit Mines	
Section/page number	Comment
Overarching	<p>This Code represents guidance material rather than how to comply with the regulatory requirements. It should be referenced as guidance material or redrafted to be a suitable Code.</p> <p>For example, the Code of Practice provides a large amount of scientific and other general background information regarding scientific and technical issues, though limited information regarding what needs to be done to effect good ground control in a practical sense. This scientific and other general background information would be better suited for inclusion in another reference/guidance document as opposed to a Code of Practice intended to provide practical guidance.</p> <p>Any legislative requirement must be clearly identified and accurately stated. Mandatory language should not be used without direct reference to a legislative requirement.</p>
Scope and Application	<p>The first full paragraph on page 4 is inappropriate as it seems to infer that other Codes prescribe a methodology for compliance when they do not.</p> <p>It then states that “any variation from this Code needs to be justified/verified” – this language is inappropriate.</p>
1.2 (p5)	The reference to social, economic and environmental benefits is irrelevant to this Code.
1.3 (p5)	The information in the box is written as a regulation but it is <u>not</u> a regulation. It must be removed.
1.3 (p6)	<p>The information related to Emergency Service workers needs to be updated to reflect the WHS Regulations.</p> <p>The third paragraph refers to a requirement for a GCMP which is incorrect – the Principal Mining Hazard is Ground or Strata Instability.</p>

2.3 (p9-10)	This section is either duplicative or inconsistent with the Survey and Drafting Directions for Mine Surveyors
Ground Control for Underground Mines	
Section/page number	Comment
Overarching	The Code of Practice incorporates an extensive amount of content that can be described as excessively prescriptive and not appropriate for inclusion in a document intended to provide practical guidance regarding compliance with obligations under the legislation. For example, the Code of Practice provides a large amount of scientific and other general background information regarding scientific and technical issues, though limited information regarding what needs to be done to effect good ground control in a practical sense. This scientific and other general background information would be better suited for inclusion in another reference/guidance document as opposed to a Code of Practice intended to provide practical guidance.
Scope and Application	<p>The Scope of this Code of Practice states that it covers all underground mines yet there is already a <i>Code of Practice for Strata Control in Underground Coal Mines</i>. All of the requirements for Strata Control in underground coal mines should be addressed in the <i>Code of Practice for Strata Control in Underground Coal Mines</i>. There is no need for this document to cover underground coal mines.</p> <p>This Code has a strong metalliferous focus and does not take account of the particular characteristics of coal mines. The title should be amended to 'Ground Control for Underground Metalliferous Mines' or 'Underground Mines- other than coal mines'.</p>
2.4 (p10)	<p>"shall" implies a mandatory requirement. Whilst we acknowledge the importance of these issues the Code exceeds the regulation by prescribing a process.</p> <p>"must" occurs in this section where there is no actual legal requirement.</p>
Table 1 (p19)	Is this table meant to represent what acceptable values are? If so this is inappropriate for the Code.
2.5 (p22)	There is a constant use of must not founded in law. Whilst we again acknowledge the importance of these issues, this language is inappropriate.
2.5 (p26)	<i>Mining through underground workings</i> needs to be made consistent with the Inundation and Inrush Code.
3 (p27)	The actual purpose of this Code is to provide advice on how to comply with the duty to develop a Ground or Strata Instability Management Plan – it has taken us 27 pages to get here. Most of the preceding pages represent guidance material and should be removed and placed in a guideline.

	The second paragraph refers to a mine operator demonstrating “sound practice” in the field of geotechnical engineering when in fact it is the mine operator’s responsibility to ensure competent persons are engaged.
Appendix A	These terms must be cross checked against other terms in the Model Act, Regulations and Codes of Practice.
Underground Winding Systems	
Section/page number	Comment
Overarching comments	<p>This Code is inadequate. There is vital information missing and that which is present is often incorrect.</p> <p>The MCA and Representatives recommend SWA bring together experts in this field and start from scratch. Australia has some of the world’s experts in this field.</p> <p>There is a lot of subjectivity and wishful thinking in the Code which is clearly impractical and inconsistent with industry practice.</p> <p>There is too much that is incorrect with this Code that we have not made comments on the specific. We will provide these at the future roundtable recommended by the MCA and Representatives.</p>