



Submission to

**Safe Work Australia**

Draft Model Work Health and Safety  
Regulations - Mining

September 2011

## Contents

Introduction .....	3
Executive Summary.....	3
Recommendations .....	3
Part 1 - General Commentary on Issues Paper and the Draft WHS Regulations.....	4
Harmonisation .....	4
Risk-based Approach.....	4
Language .....	4
Data and Information Collection .....	4
Codes of Practice .....	5
Principal Hazard Management Plans .....	5
Minimum Age.....	5
Part 2 - Specific Commentary on the Draft WHS Regulations .....	7

## Introduction

1. Thank you for the opportunity to provide this submission to the public consultation of the draft *Model Work Health and Safety Regulations*.
2. The Association of Mining and Exploration Companies (AMEC) is the peak industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises over 330 explorers, emerging miners and the companies servicing them.
3. AMEC's strategic objective is to secure an environment that fosters mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

## Executive Summary

4. AMEC supports the principle of national harmonisation of Work Health and Safety laws and associated regulatory instruments. If achieved, it will deliver significant benefits to industry and Government by removing duplication across states, improving efficiency and ultimately reduce or prevent work place incidents.
5. AMEC's submission has been prepared with assistance from its industry and expert based Safety Working Group (SWG). The SWG members include mine operators, mining health, safety and environmental officers (HSE Officers) and lawyers specialising in worker health and safety. In addition to the SWG, AMEC has consulted its wider membership and will continue to do so as national harmonisation is implemented by Australian governments.
6. This submission is in two parts. The first part consists of general commentary with respect to harmonisation, the Issues Paper and the Model Regulations. The second part is in the tabular format of the submission template supplied by Safe Work Australia and it provides specific comments to parts of the draft Regulations.

## Recommendations

7. AMEC recommends that Safe Work Australia:
  - 7.1 adopts language in the Model Regulations that removes ambiguity, is user-friendly and where appropriate uses language common to the industry,
  - 7.2 does not prescribe any new data collection processes to meet the requirements of the Model Regulations,
  - 7.3 develop and document the process for updating or creating new Codes of Practice prior to the adoption of the Model Regulations,
  - 7.4 does not include more specific control measures in the Model Regulations,
  - 7.5 does not include specific age restriction in the Model Regulations, and
  - 7.6 adopts the comments and suggestions made in Part 2 of this submission for inclusion in the Model Regulations.

## Part 1 - General Commentary on Issues Paper and the Draft WHS Regulations

### Harmonisation

8. AMEC supports the principle of national harmonisation, where on-the-ground and local administration and enforcement is preferable to a centralised model. However, AMEC has some concerns for the future integrity of the Model Regulations and the principle of harmonisation.
9. For example, a similar inter-governmental agreement exists for food legislation in Australia. The Inter-Governmental Food Regulation Agreement was formalized in 2002. Under the Agreement all states and territories have adopted the Australia New Zealand Food Standards Code (the Food Standards Code, 'the Code') through their food acts. Each of the states Food Acts closely follows the content and structure of national food code, which endeavors to provide for the consistent administration and enforcement of food legislation in Australia.
10. However, over time, jurisdictions have adapted, molded and exempted their food regulations to suit their specific needs, creating in some instances significant differences between jurisdictions, which have undermined the intent of the Code. This has in turn created additional costs to food businesses, especially those operating across multiple jurisdictions. Unfortunately, in some ways this has already occurred because the Ministerial Council has allowed Queensland, New South Wales and Western Australia to develop additional provisions.
11. AMEC raises this as an issue because it is of some concern. AMEC encourages all jurisdictions to work cooperatively and with harmonisation as the key principle and objective moving forward.

### Risk-based Approach

12. AMEC supports a risk based approach to safety outcomes. Therefore AMEC supports the approach adopted by Safe Work Australia and the jurisdictions. This method provides sufficient flexibility to allow all types of mining and exploration operations to maximize work, health and safety outcomes.

### Language

13. Notwithstanding the manner in which a court of law may interpret the Regulations, AMEC considers the language used in the Regulations should be easily interpreted and understood by the most common users of the Regulations, that is, HSE Officers. Furthermore the language used should be common to the industry.
14. There are examples in the Regulations where AMEC finds phrases that are ambiguous and open to interpretation by users. Such an example is 9.1.2 (b) described in Part 2. Where appropriate, the language should be amended to remove ambiguity.

### Recommendation

15. **AMEC recommends that Safe Work Australia adopts language in the Model Regulations that removes ambiguity, is user-friendly and where appropriate uses language common to the industry.**

### Data and Information Collection

16. AMEC supports the need for data collection in order to inform policy.

17. However, data collection should utilise existing data collection methods, that is, there should be no additional data collection process implemented to meet the Model Regulations.

#### **Recommendation**

18. **AMEC recommends that Safe Work Australia does not prescribe any new data collection processes to meet the requirements of the Model Regulations.**

#### **Codes of Practice**

19. AMEC supports the use of Codes of Practice provided the directions they contain are reasonable and practical to implement. Codes of Practice provide a flexible approach for delivering safety outcomes as they can be updated without the need for Parliamentary approval. Codes of Practice also have the added benefit of being able to include current industry best practice and therefore raise the bar of safety across the entire industry.
20. However, while the Model Work Health and Safety Bill makes provision for the Codes of Practice and specifies the consultation parties (Governments, unions and employer organisations), AMEC is unaware of any documentation that explains the process for how changes will be made to existing Codes or for the future development of new Codes. For example, describing who initiates a new code, review periods, e.g. 1, 2 or 5 year reviews, and specifying consultation periods.
21. AMEC considers that the process for should be documented, either through a policy document or through regulation or guidance before the adoption of the Model Regulations. By doing this AMEC considers it will prevent unforeseen issues, perhaps even legal issues, arising in the future. An undesirable consequence is that industry best practice is not reflected in the codes, and is therefore not translated to all operations which in turn could pose unacceptable risks to workers.

#### **Recommendation**

22. **AMEC recommends that Safe Work Australia develops and documents the process for updating or creating new Codes of Practice prior to the adoption of the Model Regulations.**

#### **Principal Hazard Management Plans**

23. AMEC supports the inclusion of Principal Hazard Management Plans in the Regulations. However, AMEC does not consider that there would be further significant improvements to safety outcomes by the Regulations including specific control measures.
24. In effect, becoming more specific has the potential for less innovation to occur when it comes to safety. Indeed, well maintained and properly updated Codes of Practice would be the appropriate place to capture alternative control measures, including those resulting from innovative practices and technologies.

#### **Recommendation**

25. **AMEC recommends that Safe Work Australia does not include more specific control measures in the Model Regulations.**

#### **Minimum Age**

26. AMEC does not consider that a specific age restriction should be included in the Regulations. The Duty of Care provisions provide sufficient guidance with regards to dealing appropriately with age.

### **Recommendation**

27. **AMEC recommends that Safe Work Australia does not include specific age restriction in the Model Regulations.**

## Part 2 - Specific Commentary on the Draft WHS Regulations

28. AMEC's considers the comments and suggestions contained in the tables below will improve the effectiveness of the Model Regulations

### Recommendation

29. AMEC recommends that Safe Work Australia consider the comments and suggestions for inclusion in the Model Regulations

Individual/Organisational Name: Association of Mining and Exploration Companies (AMEC)	
Regulations Chapter 9: Mines	
Part 9.1	
Regulation	Comment
9.1.2 (b)	The definition for exploring is not clear. Although the intent includes ' <i>activities carried out for or in connection with</i> ' the specific reference for exploration is ' <i>by mechanical means that disturb the ground</i> '. The definition for exploration activities should be consistent with existing mining related legislation, e.g., Mines Safety and Inspection Act 1994 – Western Australia. Part 1. Section 3, which has the definition: "exploration operations means any exploration activity which is undertaken on a mining tenement, whether offshore or on land, but does not include (a), (b) and (c)"
Part 9.2	
Regulation	Comment
9.2.3	Control of Risk. There is a mismatch between the Regulations and Codes of Practice. The Regulations imply a hierarchical approach, while the CoP 4.2 /18, Controlling Risks, states that it is. This should be clarified.
9.2.30 and Schedule 9.3	Prohibited Uses – Firearms. AMEC is of the view that further consideration needs to be given to the outright prohibition of firearms on mine sites. In some instances, fire arms are totally appropriate, e.g. for feral animal control or use by security guards for gold shipments. A mechanism for exemptions should be included.

	Prohibited Uses – Petrol and Fuel. AMEC does not consider there is a need for the use of both petrol and fuel as terms. The term “fuel” is sufficient.
9.2.32(3) (b)	The Schedule referred to (Schedule 4) should make reference to any other Emergency Plans that may be required at a mine. For example, a processing plant using reagents should have a Dangerous Goods Emergency Plan to ensure compliance with r75 of the Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007. If properly constructed, that Dangerous Goods Emergency Management Plan <i>should</i> satisfy the requirements of r9.2.32 – thus preventing the need to maintain two separate plans in order to cover two separate pieces of legislation. Provision for this (and any other similar overlaps) should be illustrated in either this regulation or in the schedule.
9.2.32 (4) (a) (i)	<p>This has worthwhile intent, however is of little value to some remote mines, where some emergency services may be at such a distance from the mine that they are effectively unable to be of any value in the event of an emergency. It should instead say words to the effect of “any emergency services that may exist and have authority for the area in which the mine is located, and may reasonably be expected to be capable of responding to the mine”. It, and the rest of Chapter 9 should not use the phrase “mine rescue” – it’s a term that is used less and less in modern mining. The term “Mine Emergency Response” is instead a more accurate term. The range of emergency response disciplines available at WA mines has expanded significantly over the last 20 years – due to the need for self-reliance, the lack of a body such as Coal Services Pty Ltd (NSW) and in the case of remote operations the lack of any other emergency services to render assistance to the mine.</p> <p>Another item that may be lacking is the specific targeting of state Disaster Management systems that may be in effect. For example, the WA Emergency Management Act 2005 in Part 3 talks about Local Arrangements, more specifically in s39 (b) it calls for Local Emergency Management Committees (LEMC’s) to ‘liaise with public authorities and other persons in the development, review and testing of local emergency management arrangements’. Mines in WA have formed some good relationships with their respective LEMC’s, to the benefit of all. Provision could be made in Chapter 9 – perhaps 9.2.32 (4)</p>
	<p>Whilst Schedule 9.4 - 4.3 (b) does refer to mines providing mutual aid to each other in the event of an emergency, AMEC considers that provision of mutual aid should be more strongly worded in the main body of Chapter 9. AMEC views that a mine operator <i>must</i> ensure that its makes provisions to effectively support neighbouring operations. AMEC considers the Model Regulations provides an opportunity to insert words to that effect, perhaps in a new regulation itself, such as;</p> <p>9.2.xx – Mutual Emergency Response Between Mines</p> <p>(1) The mine operator of a mine must make formal arrangements for obtaining and providing mutual emergency response with neighbouring mine sites, where;</p>



	<p>(a) those mines are within a reasonable distance from each other, and;</p> <p>(b) those mines have reciprocal emergency response capabilities, and;</p> <p>(c) provision of mutual emergency response would not unfairly impede on the ability of the mine to carry out its normal business</p>
9.2.37	<p>This draft regulation is unworkable in an underground metalliferous mining environment. It fails to take into consideration the significant differences between deep hard rock mining and shallow / soft cover soft rock mining.</p> <p>As it is, the draft regulation applies to a coal standard only.</p> <p>Underground metalliferous mines do not, as a matter of course, provide two separate means of egress in conjunction with the main means of entering and exiting the mine. This is a coal requirement and as such should not extend by default to hard rock mines. Refer to regulation 10.10 in the WA Mines Safety &amp; Inspection Regulations.</p> <p>If this regulation were passed, a large number of existing underground operations would be non-compliant, with little likelihood of being able to be made compliant due to;</p> <ul style="list-style-type: none"> <li>• Geotechnical considerations may make it unfeasible to install a second emergency egress on top of that already provided due to the presence of stoping fronts and other previously mined areas.</li> <li>• Existing mine ventilation systems may be unable to support an additional emergency egress without significant upgrading.</li> <li>• The cost of installing such a second emergency egress making the operation unviable due to; <ul style="list-style-type: none"> <li>○ Lack of available equipment or manning, necessitating a period of closure until able to obtain</li> <li>○ Depth of the operation making the installation of such a secondary emergency egress prohibitive in both cost and time</li> <li>○ Lack of suitable surface locations to collar or drive the egress</li> </ul> </li> <li>• The same costs may make it unfeasible for a number of proposed underground operations to enter development</li> </ul> <p>Current best practice in hard rock involves the strategic installation of Refuge Chambers and the installation of an emergency escape system, using combinations of drives, rises and shafts as required, to permit the exit from various locations within the mine, independently of the main decline or access.</p> <p>The new regulation does not take into account underground mines other than coal or metalliferous. Underground mining has been carried out around</p>

the world for salt, limestone, kaolin and other soft rocks which would fall outside of the wording in r9.2.37, but which have their own unique risks and may require two independent means of egress instead of one.

AMEC suggests the regulation should be altered as to read thus by altering subregulation (2), deleting the reference to 'metalliferous' from subregulation (3) and the insertion of a new subregulation at (4), shifting the current subregulation (4) to (5). Alterations highlighted in yellow, additions in red;

### 9.2.37 Emergency exits

- (1) This regulation applies to an underground mine into which:
  - (a) a shaft has been sunk; or
  - (b) a decline or an adit has been driven.
- (2) Subject to subRegulations (3) & (4), the mine operator of the mine must provide an independent means of exiting the mine workings in addition to the hoisting shaft and any other normal exit.
- (3) If the underground mine is a coal mine, the mine operator of the mine must provide at least 2 independent means of exiting the mine workings in addition to the hoisting shaft and any other normal exit.
- (4) If the underground mine is of a type or nature where a single independent means of egress may reasonably be expected to be compromised due to flooding, ingress, ground failure or other event, the mine operator of the mine must provide at least 2 independent means of exiting the mine workings in addition to the hoisting shaft and any other normal exit.
- (5) The mine operator of the mine must ensure that each additional exit required under subRegulations (2), (3) and (4) is:
  - (a) marked or signposted so that it can be readily located in an emergency; and
  - (a) marked or signposted as necessary at intervals to permit persons using that exit to determine their location within the exit system, and;
  - (b) maintained so that it remains effective; and
  - (c) provisioned if necessary at intervals with supplies of drinking water and any other equipment that may reasonably be required to aid in the exit of persons.

9.2.41 (3)	Reference to personal protective equipment. Unless stated elsewhere, the new Regulations should always direct persons to compliance with applicable Australian/New Zealand (AS/NZS) or International Standards with regards to the use of tools and equipment such as personal protective equipment. In the case of this regulation, reference should be made to ensuring “that suitable personal protective equipment which is compliant with XX Standards is available for use by, and is provided to, the worker in an emergency” .....
9.2.43	<b>Duty to provide information, training and instruction.</b> This section should be expanded to include the provision of ‘supervision’. A key failing in most incident investigations. In addition there is no reference that training should include information about health monitoring (this is included in the Code of Practice on health monitoring in mining, section 6 Page 19)
9.2.46 (b)	<b>Record of training.</b> Specific reference should be made to the retention time for training records (e.g. 7 years).
Part 9.3	
<b>Regulation</b>	<b>Comment</b>
9.3.1	<b>Worker fatigue.</b> It states that “ <i>the mine operator of a mine must develop and implement strategies for the control of any risks to health or safety associated with worker fatigue</i> ”. This is not practicable and is open to misinterpretation. How can the mine operator be held accountable for <u>any risks</u> ? There is potential for a mine worker to be affected by ‘social influences’, e.g. personal relationship issues, which can impact on worker fatigue. This is an area typically unable to be controlled by the mine operator. Reference should be made to “ <b>the control of any work-related risks</b> ”.
9.3.4 (2) (a)	<b>Health monitoring.</b> The reference to health monitoring should be consistent with existing MSIA’s & Regulations. Typically, it is not practicable for health monitoring to commence before the worker starts work at the mine. The Mine Safety Inspection Regulations 1995 – Western Australia (3.25 (1) (b)) require that a new employee complete an initial health assessment, “if practicable, before the day on which the person commences work at the mine or, if that is not practicable, within 3 months after that day”. This reference should be replicated within the new Model Regulations for Mines.
Part 9.3	
<b>Regulation</b>	<b>Comment</b>
9.3.4 (3) (c)	<b>Health monitoring.</b> Reference is made to conducting health monitoring “ <i>at a frequency determined by the mine operator in consultation with a registered medical practitioner (but at least every 5 years)</i> ”. Noise Induced Hearing Loss (NIHL) is one of the most significant occupational illnesses being identified globally. To reduce this trend, interim noise assessment (at some time significantly less than 5) should be conducted for work

	environments where the noise exposure is above 'action levels'. 5 years is too late to reverse the impacts of hearing loss.
<b>Other Comments</b>	
<b>Health monitoring.</b> AMEC considers that the requirement for health monitoring should be consistent with the Mine Workers Health Surveillance Program already in place within Western Australia and most other States of Australia (e.g. Coal Board Medical). Minimum assessments for workers at a mine should be clearly communicated. This would include but not be limited to (as determined by risk assessment): work history, respiratory questionnaire, lung function test and audiometric test.	
Part 9.6	
<b>Regulation</b>	<b>Comment</b>
9.6.1 (2)	<b>Notification of high potential incidents.</b> AMEC is concerned there is no reference to the reporting of incidents relating to the loss of control of heavy earthmoving equipment, including failure of braking or steering as referenced by the MSIA 1994 – Western Australia (Section 78 (3) (j)) unless the intent of Section 37 (g) in the Model Work Health and Safety Bill covers this requirement.
Schedule 9.1	
	<b>Comment</b>
	<b>Information to be Included in Mine Quarterly Report.</b> This process needs to be consistent with the ease of reporting that currently exists in Western Australia for AXTAT reporting. There should be no requirement to duplicate reporting into two different systems by the mine operator. So if AXTAT is to remain, Safe Work Australia should continue to obtain reporting through these established processes.