

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

Individual/Organisational name: Newcrest Mining Limited	
Regulations Chapter 9: Mines	
NOTE: The issues set out in the section below entitled "Other Comments" have general application to the whole of this submission. This submission should be read in conjunction with those comments.	
Part 9.1	
Regulation	Comment
9.1.4	<p>The definition of "principal mining hazard" refers to circumstances which "could" create a risk of multiple fatalities in a single incident or fatalities in a series of recurring incidents (see 9.1.4(1)(a) and (b)).</p> <p>The test of whether something "could" occur is very broad and has the potential to capture circumstances which are fanciful. Given the extensive nature of the obligations which are imposed in relation to principal mining hazards, the definition should be limited to circumstances which "are reasonably anticipated to" create such a risk. This is an objective test which is more appropriate and creates a higher level of certainty for operators while still achieving a commensurate safety outcome and is consistent with the "so far as is reasonably practicable" (SFARP) approach which is consistent with the SFARP approach contained in the Regulations.</p>
9.1.9	<p>Regulation 9.1.9 sets out a definition of when a person is "adversely affected by alcohol or drugs".</p> <p>As identified in the Issues Paper, the definition relies on an exercise of judgment as to whether a person is "adversely affected" to the extent they pose a risk to their own health or safety or others around them.</p> <p>Newcrest believes that this definition could lead to uncertainty, confusion and a lower standard of safety in the mining industry. For example, in circumstances where the blood alcohol limit for drivers in New South Wales is 0.05% for a fully licensed driver, a person may argue that they are not "adversely affected" by alcohol provided they are below the 0.05% limit. Without clarity in relation to the threshold of when a person is "adversely affected by alcohol or drugs", this definition is unworkable and will reduce current safety standards. See also comments below in 9.3.2.</p>
Part 9.2	
Regulation	Comment
9.2.3(4)	<p>The reference to the word "suitable" in relation to personal protective equipment (PPE) is subjective and creates uncertainty as to what is deemed to be "suitable".</p> <p>Given the duty is for the mine operator to, so far as reasonable practicable, minimise the remaining risk by providing PPE, whether PPE is "suitable" will be a consideration in determining whether the provision of such PPE was reasonably practicable. Accordingly, the</p>

	reference to "suitable" should be removed as it is unnecessary.
9.2.4(3)	<p>Regulation 9.2.4(1)(f) should make reference to 9.2.4(3). That is, a review by a HSR under 9.2.4(1)(f) can only occur if the circumstances set out in 9.2.4(3) are met.</p> <p>Further, no mechanism for review has been included in circumstances where there is a dispute between the HSR and the mine operator in relation to conducting such a review. The mine operator should be able to seek a review with an external body where it disputes that the circumstances set out in 9.2.4(3) exist.</p>
9.2.4(4)	<p>The definition of "significant change" is problematic as it includes "a change... that could... increase the risk associated with mining operations at the mine". This means that where there is <u>any</u> increase in risk, before making a change the operator must review and, as necessary, revise control measures. This onerous duty could therefore apply where there is an increase in the risk but the increase is trivial or insignificant. This is inconsistent with the title "significant change". The reference to "could" should be replaced with the phrase "are reasonably anticipated to", which is an objective and clearer standard.</p> <p>Further, the reference to "risk" is not limited to safety risks and could include business risks. The definition in 4(b) should be clarified to read; "increase the risk to <u>safety</u> associated with mining operations at the mine <u>where the increase is not insignificant or trivial</u>".</p>
9.2.6(1)(j)	Regulation 9.2.6(1)(j) requires the WHS management system to be set out and expressed in a way that is "readily accessible". It is not clear how a mine operator would set out the WHS management system so that it is "readily accessible". Clarification should be provided in relation to this requirement.
9.2.7(a)(ii)	<p>Regulation 9.2.7(a)(ii) provides that the performance standards for measuring the effectiveness of the WHS management system for a mine must be sufficiently detailed "to ensure that the ability of the mine operator to ensure the effectiveness of all aspects of the WHS system is apparent from the documentation."</p> <p>It is unclear how such a requirement will be complied with. Further, the focus is on documentation rather than the practical steps which must be taken in relation to monitoring and auditing the system (which are set out in regulations 9.2.7(b) and (c)).</p> <p>In Newcrest's view this regulation should be amended as it is vague, does not appear to have any safety benefit and, on the face of it, will not be able to be complied with. Guidance on the level of detail should be set out in the Code of Practice.</p>
9.2.10(2)(b)	Regulation 9.2.10(2)(b) requires the principal mining hazard management plan to be set out and expressed in a way that is "readily accessible". It is not clear how a mine operator would set out a plan so that it is "readily accessible". Clarification should be provided in relation to this requirement.
9.2.11(2)	<p>Regulation 9.2.11(2) requires that the risk assessment state the likelihood of the principal mining hazard causing or contributing to any harms to the health or safety of any person and the severity of that harm.</p> <p>This requirement is unclear as a risk assessment usually focuses on the circumstances/event which may result in a hazard arising rather than the likelihood of a hazard arising in isolation of any particular event. For example, rather than assessing the hazard of electrocution in isolation, a risk assessment looks at the task being performed (eg replacing a belt on a conveyor) and then assesses the likelihood of electrocution arising in the circumstances of performing the particular task.</p>

9.2.14(4)	<p>"Inrush hazard" is defined as "a hazard involving the potential inrush of any substance". This definition fails to include any quantitative threshold. For example, it could apply in circumstances where the quantity of material which "inrushes" is insignificant or trivial.</p> <p>The definition should be clarified as "a hazard involving the potential uncontrolled release of any substance which has the potential to expose a person to a risk of injury".</p>
9.2.18(2)	It is not clear how cross referencing relevant sections of the WHS management system for a mine is a control measure. This regulation should be clarified.
9.2.19(a)	The reference to the word "prevent" in Regulation 9.2.19(a) is inconsistent with the risk management principles underpinning the regulation. "Prevent" should be removed and replaced with "eliminate heat stress, or where it is not reasonably practicable to eliminate, minimise heat stress so far as reasonably practicable".
9.2.19(b)	Regulation 9.2.19(b) provides that the mine operator must ensure that the moisture content of the atmosphere in the mine is maintained at a "safe level". The reference to "safe level" is vague and guidance on moisture levels which are deemed safe should be included in the regulation.
9.2.21(3)	In circumstances where regulation 9.2.3 sets out the hierarchy in controlling risks, it is not clear why 9.2.21(3) is necessary as it merely repeats the hierarchy of the controls.
9.2.24	The reference to "other persons at the mine" should be limited to "other affected persons at the mine".
9.2.28(2)	Clarification should be given as to what is meant by the term "from the purest source available" in relation to air supplied to the ventilation system.
9.2.32	<p>The requirement to consult with emergency services and the local authority in regulation 9.2.32(4) should be qualified as there may be circumstances where it is not practicable to consult with other parties (eg if other parties are under resourced and consultation is delayed due to circumstances outside the mine operator's control).</p> <p>For clarity, the regulation should set out which agency is regarded as the "local authority".</p> <p>The requirement in regulation 9.2.32(5) should be limited to SFARP as there may be circumstances where the emergency management plan is not implemented in the event of an emergency due to the particular circumstances of the emergency.</p>
9.2.35	<p>The requirement to annually test the emergency plan in conjunction with the emergency services and other emergency response service providers consulted in preparing the plan should be qualified as there may be circumstances where it is not practicable for such testing to take place (eg if other parties are under resourced and testing is delayed due to circumstances outside the mine operator's control).</p> <p>This requirement should be a general requirement to test the emergency plan in circumstances of a material change to the plant or, in any event, every 3 years.</p>
9.2.37	<p>The requirement under regulation 9.2.37(3) is more onerous than the current obligation under the <i>Mine Health and Safety Regulation 2007</i> (NSW) (MHSR). In particular, the MHSR only requires two exits, where practicable (see clause 33(2)).</p> <p>The drafting of the provision is unclear and could be interpreted as a requirement to provide 4 exits (ie 2 exits in addition to a hoisting</p>

	<p>shaft <u>and</u> any other normal exit), which is not practicable.</p> <p>It is not clear why a more onerous obligation is proposed. In a number of situations, it will not be immediately practicable to provide for such exits (eg immediately after the shaft has been driven but before the exits have been established). Accordingly, any obligation in relation to the provision of exits should be qualified by SFARP.</p> <p>A mechanism should also be included which allows a mine operator to seek an exemption from the requirement due to particular circumstances which may be present at a mine.</p>
9.2.38	<p>It is not clear what is meant by the word "adequate means of escape". This regulation should be clarified to read, "the mine operator of an underground mine must provide, so far as reasonably practicable, equipment that assists persons underground to safely reach an exit or refuge chamber."</p>
9.2.42	<p>Regulation 9.2.42(1)(a) requires that a worker be given a written summary of the WHS management system for the mine.</p> <p>In Newcrest's experience, workers are often assisted by diagrammatic representations of systems rather than a detailed written document. The regulation (or Code of Practice) should confirm that a diagrammatic representation will satisfy the requirement under regulation 9.2.42(1)(a).</p> <p>As acknowledged in the draft Code of Practice, for large mines where the requirements to manage work health and safety are complex, the WHS management system will not be a single document but could consist of a collection of documents. Regulation 9.2.42(2) requires an operator to ensure that "a copy" of the documented WHS management system is readily accessible on request. This should be clarified that so that it refers to a person having access to inspect the documented WHS management system rather than a "copy" of the WHS management system as a hard copy of a complex WHS management system would consist of a significant amount of paper and be impracticable.</p>
9.2.43	<p>Regulation 9.2.43(a) requires the mine operator to ensure, so far as is reasonably practicable, that workers are provided with suitable and adequate information, training and instruction in relation to <u>all</u> hazards associated with mining operations.</p> <p>This is an onerous obligation and should be limited to "hazards associated with mining operations relevant to the particular workers".</p>
9.2.45	<p>Guidance should be provided in relation to the periods in which information, instruction and training should be reviewed.</p> <p>Newcrest refers to its comments in relation to regulation 9.2.5. SFARP should qualify the duty "to ensure".</p>
Part 9.3	
Regulation	Comment
9.3.2	<p>Newcrest refers to its comments in relation to regulation 9.1.9.</p> <p>The regulation should clarify that the regulation does not preclude the operator from having a standard more stringent than one based on the definition contained in regulation 9.1.9.</p>

	For example, Newcrest does not allow persons with a blood alcohol level greater than 0.0% onto site and requires persons with a blood alcohol level greater than 0.0% to leave site.
9.3.4(2)	Health monitoring should only commence before a worker starts work at a mine <u>for the first time</u> . The requirement in regulation 9.3.4(2)(b) that health monitoring be carried out immediately before the worker ceases carrying out work that exposes the worker to risks associated with mining operations, is impracticable. It should be clarified that monitoring should occur, so far as reasonably practicable, immediately before or after a worker ceases carrying out such work.
9.3.4	A definition of "registered medical practitioner" and "relevant competencies" should be included. It is impracticable for the mine operator to consult with every worker in relation to the selection of the registered medical practitioner and the timing of the monitoring. Consultation should be undertaken using the structures required under the Model Work Health and Safety Act in relation to the system which is devised for health monitoring, rather than on an individual basis.
9.3.6	Regulation 9.3.6(b) should include a reference to providing a summary of health monitoring results to other PCBUs as required by regulation 9.3.5(b). It is not clear how these provisions interact with requirements under the <i>Privacy Act 1988</i> (Cth) or various State based health records legislation. Clarification should be included in the regulation to confirm that any act undertaken in compliance with the WHS Regulations does not result in a breach of the <i>Privacy Act 1988</i> (Cth) or various State based health records legislation.
Part 9.4	
Regulation	Comment
9.4.1	In circumstances where the Model Work Health and Safety Act and Regulations include detailed provisions in relation to consultation, provisions which require a mine operator to implement a "safety role" for workers are unnecessary. For example, the requirements in regulations 9.4.1(a) and (b) substantially duplicate the requirements under s49 of the <i>Work Health and Safety Act 2011</i> (NSW). This regulation is unnecessary and should be removed (as should regulation 9.2.6(f) and the reference to regulation 9.4.1 in regulation 9.4.2).
Part 9.5	
Regulation	Comment
9.5.2	It is not clear what is meant by "significant mine modification". Guidance should be provided in relation to the meaning of this phrase. It is unclear why reviews must be undertaken every 3 months in relation to parts of the plan that identify points of access, exit and refuges. This requirement for review should be limited to circumstances where there is a material change to points of access, exit and refuges.
Part 9.6	

Regulation	Comment
9.6.1	<p>The test of whether "in usual circumstances" a person "could" have been in the vicinity at that time is unclear and requires a high degree of speculation by the operator. Further, the current definition could include instances where planned events take place (for example, it could include a planned tunnel collapse in an area where personnel usually work despite the fact that all personnel were evacuated prior to the collapse).</p> <p>Given the lack of clarity, it will be difficult to ensure compliance with such a notification requirement. Further, it is unclear why the mining industry has more onerous notification requirements than other industries.</p>
Part 9.7	
Regulation	Comment
9.7.1	<p>Regulation 9.7.1(d) requires the operator to keep each report under regulation 9.2.13 by a shift supervisor at a mine for 7 years from the date the record was made.</p> <p>Given the amount of reports which will be produced by the requirement under 9.2.13 of the regulation, the requirement to retain the reports for 7 years is unduly onerous and should be reduced.</p> <p>It is also unclear what safety benefit will be achieved by requiring an operator to keep records for 7 years rather than the 5 year period currently provided for under the <i>Mine Health and Safety Regulation 2007</i> (NSW) (see clause 156).</p>
Other Comments	
<p>Nature of the Obligations</p> <p>A number of the proposed regulations impose an absolute obligation to "ensure" particular things.</p> <p>This is in contrast to the Model Work Health and Safety Act which imposes duties on particular categories of persons to ensure "so far as is reasonably practicable" (SFARP). The qualification of SFARP has not been included in many of the obligations placed on operators under the Draft Mining Regulations. In circumstances where there are no defence provisions, absolute liability provisions must be qualified so that the particular circumstances of an incident/event which may have resulted in a duty being contravened can be considered.</p> <p>References to "all" in the draft regulations</p> <p>A number of the proposed regulations impose obligations which contain a reference to "all". For example, regulation 9.2.6(1)(i) requires the mine operator to describe arrangements in place for <u>all</u> other monitoring, assessment and inspection activities conducted for the purposes of the Act and the regulations. A failure to include "all" such arrangements will result in the mine operator being technically in breach of the regulation despite the fact that there may not be a corresponding risk to safety arising from such a breach. References to "all" should be qualified by the test of SFARP or by other qualifying tests such as the inclusion of the word "relevant".</p>	

Transitional Period

While mines will generally have in place many of the elements required by the draft regulations, significant work will need to be undertaken to conduct a gap analysis of the requirements under the new legislation against existing systems and to implement any required changes. Given that it is unlikely that the regulations will be finalised in the near future, adequate time must be provided to allow operators to transition from the current system to the new system. In Newcrest's view, this period should be, at a minimum, 12 months from 1 January 2012.

In addition, significant work will need to be undertaken in relation to the potential non-core mining regulations.

References to Regulations in the Notes

The proposed regulations contain a number of Notes which refer to other regulations (for example, see 9.2.13). It is not clear to which regulations these Notes refer.

Schedule 9.3 – Prohibited Uses in Mines

While this schedule is currently blank, the Issues Paper identifies that firearms should be prohibited for all uses at all mines. In certain circumstances firearms are necessary at mine site, for example, to cull kangaroos. Accordingly, there should provision for a mine operator to apply for an exemption from the prohibited items schedule.

Codes of Practice

Roads and Other Vehicle Operating Areas

Section/page number	Comment

Managing Naturally Occurring Radioactive Materials in Mining

Section/page number	Comment

The Mine Records

Section/page number	Comment

WHS Management Systems in Mining

Section/page number	Comment

Inundation and Inrush Hazard Management	
Section/page number	Comment
Emergency Response in Australian Mines	
Section/page number	Comment
Strata Control in Underground Coal Mines	
Section/page number	Comment
Ventilation of Underground Mines	
Section/page number	Comment
Survey and Drafting Directions for Mine Surveyors	
Section/page number	Comment
Health Monitoring	
Section/page number	Comment
Mine Closure	
Section/page number	Comment
Ground Control in Open Pit Mines	
Section/page number	Comment

Ground Control for Underground Mines	
Section/page number	Comment
Underground Winding Systems	
Section/page number	Comment