

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

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| Individual/Organisational name: The AusIMM – Sarah Gafforini, Manager Policy & Professional Standards | |
| Regulations Chapter 9: Mines | |
| Part 9.1 - Preliminary | |
| Regulation | Comment |
| 9.1.1. – 9.1.9 | <p>The AusIMM supports the scope and application of the listed definitions. However in regulation 9.1.4(b) we recommend that the reference to risk of “multiple fatalities” be changed to “fatality”. The use of the term multiple is insensitive and the death or injury of one worker is not viewed as less important by the minerals industry.</p> <p>As Part 9.1 does not include a definition for “hazard” or “risk” definitions for both terms must be included in the regulations dictionary in order to limit any potential misunderstanding regarding the identification of hazards versus risks in Part 9.2.</p> |
| Part 9.2 - Managing Risks | |
| Regulation | Comment |
| Part 9.2 Division 2 Principal Mining Hazard Management Plans 9.2.10 | <p><i>Review of Safety Management systems / Principal Hazard Plans</i></p> <p>The model regulations strongly promote safety management systems and risk assessment and effective control. While this is commended, there is a question over processes to ensure such systems are developed to a high standard. Without some further input, it is foreseeable that the quality of such safety management systems could be an issue in the future.</p> |
| Part 9.2 Division 3 Specific Risk control measures 9.2.17 – 9.2.23 | <p><i>Air Safety and explosions</i></p> <p>National and International standards are currently in place that adequately address issues such as dust or gas explosions in underground mines. The model regulations should not replace these accepted and high quality standards. In general the regulations should place a greater emphasis on current industry best practice e.g. ventilation and mine entry/exit requirements. The regulations must not place additional (or lesser) conditions that will not necessarily increase mine or worker safety.</p> |
| Part 9.2 Division 3 Specific Risk control measures 9.2.31 | <p><i>Abandoned Mines</i></p> <p>The statement in regulation 9.2.31(3) that “the mine operator of a mine must not abandon the mine” is already governed by State and Federal laws associated with licensing processes and rehabilitation arrangements.</p> <p>The model regulations should make reference to the nationally agreed strategic frameworks for abandoned mines and mine closure as released in January 2011 by the MCMPPR (Ministerial Council on Mineral and Petroleum Resources) and Industry (Minerals Council of Australia). These frameworks recognise the diversity of hazards and risks including and in addition to health and safety issues and how the potential liability varies significantly between abandoned mine sites.</p> <p>Where a mine is abandoned for valid or other reasons such as the land has been suitably rehabilitated, the responsibility for the land is often returned to the State. The regulations should include a clause stating that where land is returned to Government, the responsibility for ensuring health and safety at abandoned mine sites lies with that Government.</p> |

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| | In developing a risk assessment and management system for Abandoned mines, assessment procedures should be developed in accordance with the Australian and New Zealand ISO Risk Management - Principles and Guidelines (AS/NZS ISO 31000:2009). Many states already have Abandoned mine lands programs and the regulations should be used to support these programs. |
| Part 9.2 Division 5 Information, training and instruction 9.2.43 | <p>Maintenance of Competence</p> <p>Findings of past Coronial Inquests have found that a system to ensure the maintenance of competency of mine officials should be implemented. Competencies have been developed together with training processes and are at varying stages of implementation.</p> <p>The use of regulation to govern the competency of mine officials is not the preferred way forward. The co-regulatory approach that The AusIMM has developed with the Queensland government is the preferred option. This relationship works because The AusIMM has the expert knowledge in the areas being assessed and is able to act swiftly and work with Government in modifying, reviewing or developing health and safety competencies to address changes in legislation or to address learnings from adverse events.</p> <p>Defined minimum competencies developed by recognised professional bodies such as The AusIMM compliments may enhance audit processes within existing safety management systems that are regularly requested of officials to demonstrate the steps they have taken in maintaining competence of their safety staff. However further information provision and training programs regarding identified safety competencies would be beneficial in maintaining existing competence within Industry.</p> |
| Part 9.3 - Fitness for work and Health Monitoring | |
| Regulation | Comment |
| 9.3.4 – 9.3.6 | <p>Health Surveillance in a health and safety management system for occupational exposures</p> <p>While mining companies are required to implement health surveillance and related fitness for duty assessment, there are considerable privacy issues related to confidential personal health data. The confidentiality requirements are reasonably handled by the obligations of the medical professions; a national health record collection system is needed to collect sufficient data to observe declines in parts of the population similar to the National Radiation Dose register.</p> <p>Ideally such a system would track exposures as in a group data format so that dose-outcome relationships can be established. Such an exposure tracking system has already been implemented in the Western Australian mining sector and could be used on a National level. Additional mechanisms are required to connect the workers exposure data to the health outcome data and ensure that vigorous and valid analysis is undertaken with the objective being to identify trigger points such as cumulative exposure or deterioration in some health parameter to implement an appropriate risk reduction strategy.</p> |
| Other Comments | |
| <p>The model regulations and the Issues paper fail to identify and discuss a number of key health and safety issues that presently confront the mining industry. These include the following:</p> <ol style="list-style-type: none"> 1. Establishing and maintaining competency of persons who have authority and control of mining operations; 2. Implementing mechanisms to ensure the need for confidentiality of personal medical information is balanced against the employers responsibility to ensure persons (with health conditions) are not put at risk by the mining environment or work arrangements; and 3. Developing structures that enable the compilation of confidential personal health data, group exposure and health outcome data to enable the identification of health outcomes in mine workers that are substantially different from the health expectations of the general population. | |

The aim of such a health risk management system needs to be the early identification of at risk workers and the implementation of strategies to prevent the development of such adverse health outcomes.

International Obligations

The issues paper discusses broadly the context of the model mining regulations and identifies some issue that require specific responses to issues where a range of outcomes is possible. The discussion paper fails to give proper weight to Australia's obligation to the International Labour Organisation (ILO) Convention 176 Safety and Health in Mines Convention 176 – 1995. In brief, key sections are as follows:

Article 5 – Provision of a competent Authority to monitor and regulate

Article 6 – Assess and deal with risk

Article 7 – Take measure to minimize risk in key areas

Article 8 – Emergency response

Article 9 – Issues relation to workers exposed to hazards

Article 10 – Employers obligations – training, supervision, record of person, report dangerous occurrences and injury,

Article 11 – Regular health surveillance for exposed workers,

Article 12 – Provisions for two employers on site,

Article 13 – Rights of workers,

Article 14 – Obligations of workers,

Article 15 – Cooperation and

Article 16 – 24 Implementation and ILO provisions

As a part of the drafting process, the provisions of the model regulations should be mapped against the obligations of the ILO Convention 176 – 1995.