

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

Individual/Organisational name: Australian Mines and Metals Association (AMMA)

Regulations Chapter 9: Mines

AMMA is a strong supporter of the goal of national harmonisation of Australia's workplace health and safety laws.

AMMA also supports the national harmonisation of Australia's mine safety laws with the aim of providing a clear and seamless system of regulation for mining industry employers.

However, for the reasons outlined below, AMMA is concerned that neither the OHS harmonisation process as a whole, nor the harmonisation of mine-specific regulations, will result in nationally consistent regulation of work health and safety issues across Australia.

The National Mining Regulations that are the subject of this submission will eventually form Chapter 9 of the Work Health & Safety Regulations (the general regulations applying to all employers) but will only apply to mines and will exclude offshore operations and hydrocarbons.

Early on in the OHS harmonisation process that began in 2008 (as distinct from the harmonisation process for Australia's mine safety laws which began back in 2002 under a separate ministerial council), all state and territory ministers agreed to adopt a set of "core" Mining Regulations. However, some states insisted on also being able to adopt "non-core" provisions which are eventually expected to become mine-specific legislation in particular states. These provisions are still being drafted and have not yet been made public.

While this is a comprehensive summary on all aspects of these Mining Regulations, AMMA's key interest is where safety intersects with workplace relations, for example, in relation to drug and alcohol testing policies. The core Mining Regulations at 9.3.2 (see AMMA's comments within this submission) are not very prescriptive and simply require mine operators to develop and implement strategies to protect persons at the mine from any risk to their health or safety arising from the consumption of drugs or alcohol. How they do that is for the most part left up to them. The introduction of drug and alcohol testing policies has also been the source of many industrial disputes and tribunal hearings.

Separate to the core mining regulations that will be adopted in all states and territories, the states of Queensland, Western Australia and NSW are developing proposals for more prescriptive provisions that would add further regulation on top of these "core" provisions. For instance, the non-core proposals would require majority consent from the workforce before a mining employer could implement a drug and alcohol testing policy. In the event majority consent could not be obtained, the parties would then have to go to an 'issue resolution' process outlined in the Work Health and Safety Act. If that did not result in agreement, the employer would only be able to implement a specified 'default' testing system that limited on-site drug testing to saliva testing, with no provision for breath testing or urine testing, both of which are commonly used on mine sites.

These "non-core" proposals, while still in the early stages of development, are problematic for several reasons, not least of which is the fact that there is no drug testing company in the country that can collect and test saliva in line with the Australian Standards, but the proposals purport to require this.

This will cause major problems for employers who seek to rely on test results to terminate employment or take other disciplinary measures over the use of drugs or alcohol in the workplace. This has the obvious potential to compromise safety outcomes for not only the drug user but also for others.

The non-core proposals would also severely hamper employers' ability to introduce a policy based on anything other than saliva because all a union or employee would have to do is dispute the introduction of a urine testing policy and give the employer no choice but to revert to the default saliva testing regime.

While AMMA trusts there will be a separate public comment period about these non-core mining proposals, AMMA takes the opportunity offered by this submission to raise its issues with the draft proposals.

What is contained in the "core" National Mining Regulations in terms of drug and alcohol testing policies should therefore be seen as minimum standards rather than a comprehensive guide as to what employers will need to do to get a drug and alcohol testing policy up and running after 1 January next year (or whenever the specific provisions take effect), particularly in NSW, Queensland and Western Australia.

AMMA fears that employers will end up with a system that falls far short of the seamless national regulation they were promised, and will still be forced to grapple with a plethora of divergent state legislation and regulation. AMMA calls on all stakeholders to ensure that, in every aspect of work health and safety regulation and legislation, the harmonisation exercise is not harmonisation in name only.

Part 9.1 Preliminary

9.1.1 Meaning of <i>mine</i>	The current definition of 'mine' is much improved upon the original proposals.
9.1.2 Meaning of <i>mining operations</i>	<p>This provision needs to be amended in order to clarify whether smelting operations are included in the definition of 'mining operations'. One option for clarification would be to include 'smelting' in the exclusions from the definition in 9.1.2(3).</p> <p>Clarity is also needed to identify at what point processing ceases to be covered by these provisions, in particular smelting and beneficiation (where extracted ore from mining is separated into mineral and gangue).</p> <p>In the quarry industry, it is also unclear whether some types of operations are included, such as concrete batching, asphalt manufacture, logistics and waste management. AMMA recommends that the above types of operations be kept outside the Mining Regulations and only covered where a principal mining hazard exists.</p> <p>In 9.1.2(2), the reference to 'handling' or 'storing' extracted minerals being included in the list of activities captured in the definition of 'mining operations' needs to be clarified. For instance, would core libraries held offsite be considered storing and handling aspects of mining activities? What about stockpiles at loading facilities or ports? How are 'tailings' treated in this section?</p> <p>The interaction between legislative regimes covering transport and ports must also be made clear in these provisions, along with the interface between public and private infrastructure.</p> <p>Clarification is also needed about who has responsibility once goods leave a mine site. For example, is the mine operator still responsible for materials when they are on the highway? AMMA's understanding is that once something leaves the mine site, other legislation such as transport legislation kicks in. However, clarification of this interaction would be beneficial.</p>
9.1.3 Meaning of <i>mineral</i>	The current definition of mineral is fine. However, going forward, the states will be able to add to this definition any new minerals they want to include. For this reason, if a new mineral is added, efforts should be made by all states and territories to maintain uniformity and all adopt the new definition.
9.1.4 Meaning of	The definition of 'principal mining hazard' included in this provision does not meet the stated intention that such hazards are only those

<p><i>principal mining hazard</i></p>	<p>that have a low likelihood of occurring but a high consequence of multiple or cumulative fatalities if they do.</p> <p>Also, for the sake of clarity, all provisions relating to principal mining hazards in these Regulations should be kept together. This would include bringing together this provision plus those included in the “General control of risk” section starting at 9.2.1. This would help ensure there are no double-ups of provisions.</p> <p>It should also be noted in a prominent location in these Regulations that Principal Mining Hazard Management Plans are a subset of Work Health and Safety Management Plans. This is not articulated at any point. It must be made clear that the Work Health and Safety Management Plan is the core plan and that other plans, such as for principal mining hazards and emergencies, hang off that. Because the Work Health and Safety Management Plan is the primary means of managing risk at mining operations, clearly the Principal Mining Hazard Management Plan forms part of the Work Health and Safety Management Plan.</p> <p>Further, the specific controls relating to principal hazards should be consistently worded in the regulations and should ensure that all principal hazards are addressed.</p> <p>Lastly, there still seems to be confusion about hazard versus risk in this section. This could be due to the lack of clarity around the fact that these are low likelihood events. There is also some overlap between these provisions and the major hazard facilities provisions. It should be made clear that a mine is not a major hazard facility and nor is it a construction site.</p>
<p>9.1.5 Meaning of <i>mine operator</i></p>	<p>There is scope for further clarification of the definition of ‘mine operator’ without being overly prescriptive. Guidance material could give examples of the types of scenarios that could play out on mine sites in terms of who is the mine operator and who is the mine holder in relation to various activities.</p> <p>It should also be made clear that a person conducting a business or undertaking (PCBU), where the undertaking is a mining operation, does not devolve their duties under the Mining Regulations if it is not also the mine operator. Again, this could be clarified in guidance material.</p> <p>At present, there is some confusion among AMMA members about the definitions of ‘mine holder’ versus ‘mine operator’. For instance, what happens in a scenario where a processing plant is operated by a company that is not the mine operator? Could the mine operator then be held responsible for those operations? In cases where the mine holder is responsible for processing operations rather than the mine operator, AMMA understands that the mine operator would have the principal duties with respect to the mine. Again, these types of arrangements could be clarified in guidance material while still leaving it up to companies to structure their contractual arrangements as they see fit while observing their non-delegable duties. AMMA also notes that multiple PCBUs on mine sites have a duty to consult and co-ordinate with each other in terms of their respective duties of care.</p> <p>The overall assumption here is that the site is the responsibility of the mine holder but that they could then sub-contract some of those duties out to the mine operator. This would need to be made very clear in contractual arrangements and, again, guidance material could help.</p> <p>This section could also clarify that PCBUs have responsibility for anything they have control or influence over. One assumes that multiple operations on one mine site would be seen as different entities. The head contractor would be the mine operator in some situations but not necessarily for the overall site.</p>

	More guidance is needed around the interactions here.
9.1.6 Meaning of <i>mine holder</i>	<p>See comments above for 9.1.5 re interactions between ‘mine holder’ and ‘mine operator’.</p> <p>There is still some debate about the definition of ‘mine holder’. Is the mine holder the mine manager or the mine owner? This needs to be clarified given that the focus of these Regulations is on the mine operator.</p> <p>‘Mine holder’ is not a term that is used throughout these Regulations but is understood to be the person whose name is on the lease.</p>
9.1.7 Appointment of mine operator	<p>There is scope for further clarification about how these provisions will operate regarding the appointment of a mine operator. Guidance material could give examples of scenarios.</p> <p>It is also unclear what types of changes are contemplated by this provision. For example, what happens when the mine operator ceases to be the mine operator? When does the mine operator’s responsibility cease and what is the process for the changeover? AMMA notes there is a higher probability of this type of changeover happening in quarry sites than other mine sites. While this would likely come down to a commercial arrangement rather than OHS regulation, it should be clarified what the non-delegable responsibilities for employers are. AMMA supports these types of arrangements being left up to the parties rather than being overly regulated as long as the objectives are clear.</p>
9.1.8 Notification by mine holder who is the mine operator	
9.1.9 Meaning of <i>adversely affected by alcohol or drugs</i>	AMMA members are uncomfortable with the subjective nature of the term ‘adversely affected’ by drugs or alcohol. The assessment of whether someone is adversely affected, either from the employer’s point of view or the individual’s, is always difficult and some training might be warranted here. New issues are also arising in this area with the new array of manufactured drugs that are increasingly appearing on mine sites but are almost impossible to detect with drug tests and hence to know for sure whether someone is adversely affected by them.
Part 9.2 Managing risks	
Division 1 – General control of risk	
9.2.1 Identification of hazards	<p>These provisions are much improved on earlier proposals. However, some issues remain.</p> <p>There are principal mining hazard provisions elsewhere in the Mining Regulations in addition to these, such as in 9.1.4. AMMA maintains that all of the provisions relating to principal mining hazards should be placed together for clarity and to ensure no double-ups.</p> <p>Again, it should be noted here that Principal Mining Hazard plans are a subset of Work Health and Safety Management Plans. Unfortunately, this has not been made clear.</p> <p>The phrase used here and elsewhere throughout the Mining Regulations, ‘the mine operator of a mine’ appears odd, with the second half of the phrase seemingly superfluous.</p>

9.2.2 Assessment of risks	
9.2.3 Control of risk	The language used throughout the Mining Regulations should make explicit there is a hierarchy of controls in terms of controlling risk. This hierarchy could be included at the start of the Regulations and would not need to be replicated throughout.
9.2.4 Review of risk control measures	9.2.4(1) says a health and safety representative at a mine may request a review of risk control measures if they believe on 'reasonable grounds' that the mine operator has not adequately reviewed them. Arguably, this ability already exists for any worker to do this regardless of whether they are a health and safety representative. Workers have the ability to take health and safety issues to a dispute resolution process as outlined in s81(1) and (2) and s82 of the Work Health & Safety Act and ask the regulator or an inspector to make a decision if they are not satisfied. Therefore, this provision is arguably redundant and the additional role for HSRs is questionable. If the provision is retained, there needs to be detailed and precise guidance plus training of health and safety representatives as to what constitutes 'reasonable grounds' upon which to seek a review of risk control measures.
9.2.5 WHS management system – duty to establish and implement	Should 9.2.5(1) refer to Australian Standard 4801 - Safety Management Systems - for structure and function? This standard requires five main components of OHS management that are implemented into a business's activities to ensure all OHS issues are effectively managed. Also, 9.2.5(3)(a) currently says a WHS Management System must 'provide a comprehensive and integrated system for the management of all aspects of risk control in relation to the operation of the mine'. This should be reworded to say 'the management of all aspects of risk' rather than 'all aspects of risk control'.
9.2.6 WHS management system – content	This provision is not a regulation but rather a checklist and would be best placed in guidance material. If retained, 9.2.6(1)(a) should be changed to say the WHS Management System must state the mine operator's 'health and safety policy' rather than just 'safety policy'. In 9.2.6(1)(c), the requirement to describe the management structure might not be workable for small businesses and should be changed to say 'where appropriate'.
9.2.7 WHS management system – monitoring and audit	
9.2.8 WHS management system – review	
9.2.9 Giving information to the regulator	
Division 2 – Principal mining hazard management plans	

9.2.10 Duty to prepare plan	<p>As mentioned earlier in this submission, there should be a clear link here showing the relationship between Principal Mining Hazard Management Plans and Work Health and Safety Management Plans, ie. making clear that the Work Health and Safety Management Plan is the core plan off which the Principal Mining Hazard Management Plan hangs.</p> <p>9.2.10(3)(c) is about risk control measures, not a 'risk assessment'.</p> <p>The requirement under 9.2.10(3)(e) to include 'all matters specified in Schedule 9.1' in the Principal Mining Hazard Management Plan should be removed given AMMA questions the relevance of including Schedule 9.1 at all in these Regulations. The schedule should instead go into a guidance document. The reference to Schedule 9.1 should in any case be changed to Schedule 9.2 as that is now the schedule that contains information relating to Principal Mining Hazard Management Plans.</p>
9.2.11 Risk assessment under a plan	<p>In 9.2.11(1)(a), the word 'appropriate' should be replaced with 'relevant'.</p> <p>In 9.2.11(2)(a), the use of the word 'likelihood' could lead to the use of a risk matrix and its value is therefore questionable.</p>
9.2.12 Review of plan	The link should be made clear between this provision and 9.1.4 – 'Meaning of principal mining hazard'.
Division 3 – Specific risk control measures	
9.2.13 Communication between outgoing and incoming shifts	<p>These provisions require the supervisor of each outgoing shift to provide a written report to the supervisor of each incoming shift in relation to any health and safety matters.</p> <p>While many mine sites have systems in place for such written communication of safety issues, this provision could prove unnecessarily burdensome for many employers. In some situations, for example where there are 15 night shifts followed by 15 day shifts, the requirement for written communication of safety issues by each shift supervisor could be unnecessarily burdensome, especially given the requirement for records to be kept for seven years.</p> <p>In some quarrying operations, for example, there are simply not enough people on-site to provide written reports at the end of every shift.</p> <p>AMMA maintains that handover information does not need to be in written form to achieve the desired outcome, ie. to ensure that information about health and safety risks is passed on between shifts. Handovers could, for instance, be in the form of crib room meetings using a whiteboard. A handover sheet or checklist may also suffice in this regard.</p> <p>If a mine operator wants to specify that this information be in written form that is up to them, but a requirement to do so may not be reasonable in terms of the amount of paperwork required for no extra benefit. AMMA very much supports the objective of communicating safety issues between shifts but does not feel this level of prescription is warranted. As long as the information is passed on, that is the main thing the provisions should be concerned with.</p>
9.2.14 Progress of workings	<p>Much of the detail here could be moved into a code or guidance material.</p> <p>9.2.14(4), which describes what an 'inrush hazard' is, would be better moved higher up in this section so that the definition is clear from the outset, ie. it could be moved up to 9.2.14(2).</p>
9.2.15 Shafts and	An extra provision should be inserted after 9.2.15(3)(c), ie. at 9.2.15(3)(d) to include the activity of underslinging transport materials into

winding	underground workings.
9.2.16 Movement of mobile plant	<p>The aim of identifying this as a principal mining hazard is to highlight the risks associated with mobile equipment interaction. This entire provision talks about just one component of this – road design – whereas the issue is really about traffic management including communication, education and training, access, and the types of activities undertaken etc.</p> <p>It is important to bear in mind that there is also a code that is not yet finalised on traffic management that will need to interact with and be made consistent with this provision.</p>
9.2.17 Dust explosion in an underground mine	
9.2.18 Ventilation control plan for an underground mine	This is one of a number of provisions in the Regulations where an absolute duty is imposed on the mine operator phrased as a ‘must ensure’. In this and other provisions of a similar nature, ‘so far as is reasonably practicable’ should be inserted given the fact that complete control may not be possible and the mine operator might not be in a position to control the outcome.
9.2.19 Temperature and moisture content of air	<p>There is no guidance as to what the requirement means under 9.2.19(b) - to ensure the moisture content of the atmosphere in the mine is maintained at a safe level. What is a safe level with respect to moisture?</p> <p>Also, the phrase ‘so far as is reasonably practicable’ should be inserted in order to qualify these requirements.</p>
9.2.20 Measures to be implemented	
9.2.21 Air quality – exposure to airborne contaminants	
9.2.22 Air quality and safety – underground mine	Reference to control mechanisms such as personal protective equipment would be useful either here or in guidance material.
9.2.23 Air safety – additional requirements relating to methane in underground mines	
9.2.24 Notice to workers and others	The requirement here that the mine operator ‘must notify any affected workers or other persons at the mine’ in the event that the results of air monitoring show there is a safety issue should be changed to a requirement to notify only ‘relevant other persons’ rather than ‘other persons’.

9.2.25 Signs	
9.2.26 Air monitoring – all mines	This section should be linked to the ‘health monitoring’ provisions of these Regulations under <i>Part 9.3 – Fitness for work and health monitoring</i> .
9.2.27 Records of air monitoring	In 9.2.27(2)(b), it needs to be clarified who ‘other persons’ are in terms of the requirement for the mine operator to keep a record of air monitoring and make it readily accessible to workers and ‘other persons’ at the mine.
9.2.28 Ventilation in an underground mine	These provisions should be qualified by inserting ‘so far as is reasonably practicable’. For instance, it may not be possible for a mine operator to ensure 9.2.28(1)(c) ‘that dead end openings are not worked unless adequate auxiliary ventilation is provided’ in cases where the air ventilation system is knocked out by a power failure.
9.2.29 Ventilation plans for underground mines	
9.2.30 Prohibited uses	This information should be in guidance material rather than the Regulations as it refers only to Schedule 9.3 which AMMA notes is absent from the current version of these Regulations and which should be in guidance material in any case.
9.2.31 Closure, suspension or abandonment of mine	The requirement under 9.2.31(3) that ‘the mine operator of a mine must not abandon the mine’ will sometimes be impossible. There are mines that reach the end of their commercial life and abandonment occurs. The objective/outcome sought to be achieved by this provision should be made clear.
Division 4 – Emergency planning	
9.2.32 Emergency plan – duty to prepare and implement	<p>The fact is that every site or business is required to prepare an emergency plan, so including it in the Mining Regulations appears to be a double-up.</p> <p>As to the requirement to consult with emergency services in preparing an emergency plan under 9.2.32(4)(a), the experience in some parts of the resource industry, including remote locations and quarrying, is that emergency services are not interested in consulting with mine operators about these matters. AMMA therefore suggests the wording be changed to: ‘The mine operator must: (a) offer or attempt to consult with’ rather than ‘consult with’.</p>
9.2.33 Emergency plan – to be provided to emergency services	Again, AMMA members in remote locations have experienced difficulty getting the emergency services people interested. The requirement for the mine operator to ‘provide a copy of the emergency plan for the mine to the emergency services consulted in preparing the plan’ should remove the reference to consultation.
9.2.34 Emergency plan – provision of resources	
9.2.35 Emergency plan – testing	If this provision remains, it needs to be clarified under 9.2.35 as to exactly what constitutes ‘testing’ in terms of the requirement for the mine operator to ‘test the emergency plan’.

9.2.36 Review of emergency plan	
9.2.37 Emergency exits	The requirement under 9.2.37 to have two additional means of exit plus the normal exit is unnecessary. Best practice in this area is to provide two means of exit – the main exit and an emergency exit. AMMA sees no need to deviate from this.
9.2.38 Safe escape from underground mines	
9.2.39 Emergency signage	
9.2.40 Self-rescuers	These provisions make providing 'self-contained self-rescuers' mandatory. AMMA maintains it could be problematic to define here the type of apparatus that needs to be used given the technology will change. This is phrased as an absolute duty to provide but could be left up to the mine operator as to the means of the self-rescue.
9.2.41 Personal protective equipment in emergencies	
Division 5 – Information, training and instruction	
9.2.42 WHS management plan – duty to inform workers	Under 9.2.42(1)(a), a mine operator must ensure before a worker commences work at a mine that they are given a written summary of the Work Health and Safety Management Plan. AMMA maintains that a written summary is not strictly necessary and this provision could allow for other mechanisms to provide that information such as online summaries or e-learning facilities. The requirement could be phrased as a duty to give the worker 'access to' the information rather than be 'given' the information. This would recognise the fact that there are sometimes issues around access and updating workers on these types of matters. Also, are there any requirements to provide written summaries to existing workers as of 1 January 2012?
9.2.43 Duty to provide information, training and instruction	The requirements under 9.2.43(a) and (b) in relation to providing information, training and instruction are already required under the Work Health & Safety Act and should be removed so as not to double-up. Any other provisions that are also in the Act and/or the Work Health & Safety Regulations (the General Regulations) should also be removed from the Mining Regulations.
9.2.44 Information for visitors	
9.2.45 Review of information, training and instruction	
9.2.46 Record of	AMMA queries whether the requirement under 9.2.46(b) to keep a record of training 'while the worker remains engaged at the mine'

training	<p>should also require employers to keep the records for the length of the statute of limitations on prosecutions given that these types of records may become relevant.</p> <p>For instance, in 9.7.1(3)(b) there is a requirement to keep a mine record for seven years. Should these two provisions be made consistent?</p>
Part 9.3 – Fitness for work and health monitoring	
9.3.1 Worker fatigue	<p>Under 9.3.1, there is a requirement for the mine operator to develop and implement strategies for the control of ‘any risks’ to health or safety associated with worker fatigue. This should be amended to refer to only those risks arising from the mining operations so as to be consistent with the rest of the Regulations. The wording could be changed to ‘any risks arising from the mining operations’ rather than ‘any risks’.</p>
9.3.2 Alcohol and drugs	<p>These provisions allow employers sufficient flexibility to choose how they develop and implement strategies to protect persons at a mine from any risk to their health and safety arising from the consumption of alcohol or the use of drugs by any person. However, AMMA is concerned that any apparent flexibility for employers under the drug and alcohol testing provisions contained in these Mining Regulations will be usurped by proposals for “non-core” mining industry provisions in WA, Queensland and NSW, which are far more prescriptive. This is of great concern to AMMA members given that WA and Queensland are the two largest resource states and the states in which many AMMA members operate.</p> <p>AMMA’s April 2011 submission to Safe Work Australia on the Work Health & Safety Regulations and codes of practice raised concerns about some of the proposals that had been discussed by state government stakeholders in the lead-up to developing the ‘core’ and ‘non-core’ mining provisions that will be adopted differently in each state.</p> <p>AMMA’s submission placed on the record its opposition to any future proposals that might require consensus to be reached between a mine operator and their workforce prior to introducing a drug and alcohol testing policy from 1 January 2012 (or whenever the specific provisions take effect). AMMA members report that consensus or even majority consent are almost impossible to achieve given the common disinclination of employees and their unions to support the implementation of drug and alcohol testing policies. Unions’ position is often that saliva testing is preferred because, they argue, it is less invasive.</p> <p>AMMA’s submission to that review accepted that a requirement to consult with the workforce was workable as long as employers were in the end able to introduce the drug and alcohol testing policy they saw fit in the event agreement could not be reached.</p> <p>AMMA also placed on the record its concerns if any existing drug and alcohol policies not introduced by consent were extinguished or had to be renegotiated following the implementation of the nationally ‘harmonised’ system.</p> <p>Similarly, AMMA would strongly oppose any proposals to require employers and employees or their representatives to participate in mandatory issue resolution procedures in the event a drug and alcohol testing policy could not be agreed upon.</p> <p>AMMA notes these overly prescriptive and, from an employer’s point of view, restrictive proposals are currently on foot in three states – NSW, Western Australia and Queensland. This means that at least those three states are proposing to have different and more onerous drug and alcohol testing provisions than appear in these Mining Regulations. With regard to employers’ ability to implement drug and alcohol testing policies, the core Mining Regulations that are the subject of the current submission should be seen as minimum</p>

	requirements for employers rather than a comprehensive guideline as to what will be required from employers based in NSW, Qld and WA.
9.3.3 Workers' duty in relation to alcohol and drugs	<p>The provision covering workers' duty in relation to alcohol and drugs could be expanded. AMMA members would like to see much more of a duty placed on workers here.</p> <p>There should also be a link in these provisions to the definition of 'adversely affected' by drugs or alcohol contained in 9.1.9.</p> <p>The fitness for work and health monitoring section could also usefully include a section on worker duty in relation to fatigue and worker duty in relation to bringing prohibited items onto a mine site.</p>
9.3.4 Duty to carry out health monitoring	<p>Some provisions would be useful here as to a worker's right, if any, to refuse mandatory health monitoring and an explanation of what happens in those instances. There is sometimes a reluctance on the part of workers to submit to health monitoring. For instance, under 9.3.4(2)(b), what if a worker refuses health monitoring before ceasing work at the mine?</p> <p>AMMA also maintains that health monitoring should be carried out in relation to specific risks rather than in relation to all possible health issues. Therefore, these provisions should be defined in relation to the work carried out and the principal mining hazard involved.</p> <p>Also, are there any requirements for health monitoring in relation to existing workers once these Regulations take effect?</p> <p>In relation to the requirement under 9.3.4(4) for the mine operator to consult the worker in relation to selecting the registered medical practitioner and the timing of monitoring, AMMA maintains this should only be required where a level of invasiveness is involved in the monitoring.</p> <p>In 9.3.4(6), the requirement for the mine operator to pay all expenses in relation to health monitoring should be clarified to include only those expenses associated with the particular risk identified. There are also issues here in relation to sub-contractors who may not necessarily want to submit their workers for medicals for short-term work, especially if that work is low-risk. There could be a lesser requirement specified for short-term work that is low-risk.</p>
9.3.5 Health monitoring summary	This provision requires a mine operator to obtain from the registered medical practitioner a summary of the health monitoring carried out in relation to a worker. What happens to a mine operator where the medical practitioner refuses to provide a summary, citing for instance privacy grounds?
9.3.6 Health monitoring records	<p>9.3.6(4) requires a mine operator to ensure that health monitoring results are given to a worker if mining operations cease at the mine. This provision should also include 'or if the worker ceases work at the mine'.</p> <p>A new provision could also be inserted at 9.3.6(5) requiring employers to provide a statement about the hazardous chemicals a worker has been exposed to if the mine ceases to operate or the worker ceases work at the mine. This should be limited to the hazardous substances outlined in Schedule 14 of the Work Health & Safety Regulations.</p>
Part 9.4 – Consultation and workers' safety role	
9.4.1 Safety role for workers	It is unclear what the purpose of these provisions relating to workers' safety role is. Is this a double-up of another requirement appearing elsewhere in the legislation or regulations or is it a separate requirement? If it is a separate requirement, more detail would be needed

	either in the regulations or guidance material as to what is envisaged by this role.
9.4.2 Mine operator must consult with workers	<p>It appears that this set of provisions is redundant given the requirement to consult with workers laid out in the Work Health & Safety Act. Arguably, this entire set of provisions could be removed.</p> <p>If they remain, the reference in 9.4.2(e) to developing and implementing strategies to protect persons at the mine from any risk to health and safety arising from the consumption of alcohol or drugs by any person as well as any risk arising from worker fatigue should be restricted to requiring the mine operator to develop and implement strategies to control only those risks arising from the mining operations rather than extending to general care as the current wording suggests.</p>
Part 9.5 – Mine survey plans	
9.5.1 Survey plan of mine must be prepared	<p>Some quarry operators will have an issue with the requirement under 9.5.1(2) that the Mine Survey Plan must reference the mine to the Geocentric Datum of Australia and the Australian Height Datum. It will be difficult for small quarry operators to comply with this.</p> <p>Also, 9.5.1(3) should read: ‘The plan must clearly show, where applicable’ and then list the requirements rather than being phrased as an absolute requirement for the plan to ‘clearly show’.</p> <p>The requirement under 9.5.1(1)(a) to ensure that the mine survey plan is prepared by a registered mine surveyor in underground coal and metalliferous mines cannot necessarily be applied in a practical sense. This requirement should be removed.</p>
9.5.2 Review of survey plan	Some AMMA members have concerns with the frequency of review required here (ie. every three months or annually depending on the circumstances). In the quarrying sector, annual reviews will be too frequent except for those producing large volumes. AMMA maintains that at least every two years would suffice in this instance instead of every year.
9.5.3 Survey plan to be available for inspection	
Part 9.6 – Notification of high potential incidents	
9.6.1 Duty to notify of high potential incidents	<p>Section 37 of the Work Health & Safety Act refers to ‘dangerous incidents’ rather than high potential incidents. The provisions in these Regulations need to be made consistent with the Act or vice versa.</p> <p>So, in 9.6.1(1) and (2), references to ‘high potential incidents’ should be changed to ‘dangerous incidents’ in order to be consistent with the Act. All associated Regulations should also be made consistent.</p>
Part 9.7 – Mine records	
9.7.1 Mine record	
Schedule 9.1 – Work health and safety – information to be included in mine quarterly report	
1 Commodity	

processed	
2 Number of workers	
3 Number of hours worked	
4 Number of incidents	
5 Number of lost time injuries	
6 Days lost from work	
7 Number of restricted duties injuries	
8 Number of restricted duty days	
9 Number of medical treatment injuries	
10 Number of fatalities	
Schedule 9.2 – Principal mining hazard management plans – additional matters to be considered	
1 Ground or strata instability	There is no need for this entire schedule to be included in the Regulations as there is nothing in it that would not more appropriately go into guidance material.
2 Inundation and inrush	
3 Mine shafts and winding operations	
4 Roads and other vehicle operating areas	
5 Air quality, dust and other airborne contaminants	

6 Fire or explosion	
7 Gas outbursts	
8 Ionising radiation	
Schedule 9.3 – Prohibited uses in mines	
As with Schedule 9.2, this section could be removed and all go into guidance material rather than the Regulations.	
Schedule 9.4 – Matters to be included In emergency plan for a mine	
1 Site and hazard detail	
2 Command structure and site personnel	
3 Notifications	
4 Resources and equipment	
5 Procedures	
APPENDIX – Jurisdictional Notes (Mines)	