



27 September, 2011

Safework Australia


Email: mining@safeworkaustralia.gov.au

Dear Sir/Madam,

Please find enclosed a brief submission from the Australian Manufacturing Workers Union on the Draft Mining Regulations which were released for comment in July 2011.

Unless indicated in our comments, the AMWU supports the submission made by the CFMEU Mining and Energy Division.

Yours sincerely,



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

Individual/Organisational name: Australian Manufacturing Workers Union
Contact Deborah Vallance

Regulations Chapter 9: Mines

Introduction

The Australian mining industry is a profitable industry but in some sectors it is unable to protect the lives of those it employees. For example the following fatalities have occurred in Western Australia during the last 12 months:

- April 2010: an underground loader operator at the Perseverance, operated by BHP Billiton ,
- August 2010: an underground miner at the Noreseman Gold Mine
- December 2010: A maintenance contractor at mine operated by Fortescue Metals
- June 2011: a scaffolder was fatally injured at a Rio Tinto site
- July 2011: a contractor was crushed by a collapsing crane at BHP Billiton's Port Hedland.
- August 2011: an employee was killed at a Rio Tinto site

AMWU members work in process plants and workshops which are often located on the mine lease. Many of these workers are employed by contractors to maintain and service mining equipment. It is of concern that the Draft Mining Regulations are not clear on how the health and safety of those who “work around the hole in the ground” is addressed.

The issues paper makes reference to the Model WHS Regulations (the final copy is not yet publically available) but it is unclear how these sets of regulations link together. For example

Regulation 9.1.2 defines mining operations to include

1. *Handling or storage of extracted materials*
2. *Preparing or processing of extracted materials*
3. *Constructing or decommissioning an extraction site*

but provisions pertaining to the WHS management system do not reference hazards in addition to those which are specific to the “hole in the ground”.

AMWU believes that the Mining regulations need to be explicit regarding the scope of the regulations i.e. all operations on the mining lease, not just the mine. For example under the current definition of “mining operations” (regulation 9.1.2) it is unclear if maintenance workshops are within scope.

The issues paper notes that the Draft Mining Regulations need to be read in conjunction with the draft Model WHS Regulations and the non-core legislative processes has the following key requirements under consideration:

- requirements for the appointment of a site senior executives at every mine
- requirements for additional full-time or part-time statutory mine safety positions
- depending on the type of the mine and its associated hazards and risks
- arrangements to ensure consistent tri-state competency assessment and approval arrangements for key statutory positions

- principal control plans covering ventilation, electrical engineering, mechanical engineering, explosives and emergency response
- extending requirements for principal mining hazards to cover the risks of spontaneous combustion
- additional specific controls for certain hazards
- notification requirements in relation to prescribed high-risk mining activities, including information requirements and waiting periods before prescribed work may commence
- extended incident notification, investigation and protected information release provisions
- additional regulator enforcement powers similar to those that currently apply under mine health and safety laws
- provision for prescribed industry inspectors, for example district check inspectors, district worker representatives
- provision for ministerial appointment of Boards of Inquiry.

Without a draft of these issues it is very difficult to comment on the “whole regulatory package” for the mining sector. In particular

- the lack of clarity regarding the application of the Mining Regs and the other chapters in the Model Work Health and Safety (WHS) Regulations and the Mining Chapter e.g. there are no notes or cross referencing
- In the jurisdictions with non core Mining Health and Safety laws **it is impossible** to comment without the parent laws i.e. how can informed comment be made regulations which appear to exist in a vacuum?
- The general WHS Regulations, Plant chapter outlined the clear duties of different types of PCBU's, depending upon their role/level of control. A similar approach would be beneficial in these regulations
- The Lack of clear linkage with requirements on designers, suppliers etc. in the parent WHS Act and other chapters of the WHS Regulations (noting of course we have no indication of how this will work for *non core jurisdictions*)
- These regulations potentially provide for a downgrading of the requirements of the Model Work Health and Safety (WHS) Regulations i.e. mobile plant requirements (model WHS Regs 214/215) are not linked to Mining Regs 9.2.16
- The introduction into the general WHS Regulations (as Mining is a chapter in the core WHS law jurisdictions) of the concept of “adversely affected by alcohol or drugs”. The AMWU opposes drug and alcohol testing regimes. There is little, if any, evidence of improved safety outcomes and significant anecdotal evidence of continued drug abuse that is driven “underground”. The AMWU supports a holistic approach which deals with impairment i.e. the management of fatigue, drug and alcohol abuse under the general heading of fitness for duty. This must be decided through consultation to ensure there is an agreed process which is recorded and adhered to by all parties.
- The fragmented required content of Principal Mining Hazard Management Plans (PMHMP). As outlined in the CFMEU Mining submission the content of PMHM plans are lacking and fail to include currently accepted regulation and practice (for example see CFMEU submission re Regulation 9.2.6, 9.2.10 and 9.1.15 and schedule 9.2)
- The failure to use the model of Major Hazard Facility Chapter when referring to the detailed content and general approach of the Principal Mining Hazard management plans. For example: The Safety Case and Safety Management system in Part 9.3. Reg 556
The operator of a determined major hazard facility must implement risk control measures that:
 - (a) *eliminate, so far as is reasonably practicable, the risk of a major incident occurring; or*
 - (b) *if it is not reasonably practicable to eliminate that risk, minimise that risk so far as is reasonably practicable.**(2) The operator of a determined major hazard facility must implement risk control measures designed to minimise, in the event of a major incident occurring, its magnitude and the severity of its consequences to persons both on-site and off-site.*

No such overarching obligations are placed on a mine operator. Given the hazards associated with shafts and winding, inrush hazards etc. this is glaring significant variation from the approach taken in the MHF chapter.

Part 9.1

9.1.9	Delete the regulation
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Part 9.2

9.2.2.	This regulation would benefit significantly from the approach taken in Chapter 9 of WHS Regulations: see comment above
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9.2.3.	This regulation needs to reflect the obligation of PCBU to eliminate <i>so far as reasonably practicable</i> (SFARP) and if not <i>reasonably practicable</i> to eliminate SFARP. See general comments
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9.2.4.	The AMWU supports this Regulation (it reflects the Draft WHS Regulations provisions)
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Part 9.3

9.2.6	The AMWU supports the general approach of the CFMEU Mining divisions concerns regarding this regulation. There is no need for any exemptions. And as outlined above, these Regulations should be modelled on the approach in Chapter 9 Part 3 Regulations 555 etc.
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9.2.16 and 9.2.17	The AMWU supports the detailed comment of the CFMEU Mining on these regulations e.g. the regulations require specific addition of timeframes for testing of ropes etc.; design according to fail safe principles and two independent braking systems and there is a need for specific reference to coal mine hazards. If improvements have been made to particular jurisdictions' regulations, as a result of mine fatality investigations, it is not acceptable to omit these from the Draft Mining Regulations. As submitted by the AMWU in comment for the Draft Model WHS Regulations, where there is a known risk control mechanism these must not be qualified by SFARP. The particular control measure needs to be mandated in the regulations. . The WHS Regulations Chapter 5 (Plant) deal with specifics of mobile plant which are not reflected or referred to in these regulations.
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9.2.18	AMWU supports the CFMEU mining submission e.g. insertion of core mine ventilation control plans into the regulations. These matters are not appropriate for a Code of Practice.
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9.2.20-26	The intent of these regulations must be to ensure that air borne contaminants are controlled by means other than personal protective equipment. The regulations need to include element s from the Core Drafting Instructions for Model RegulationsV8 which detail the actions required by a mine operator if safe levels of air borne contaminants are exceeded.
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There is no indication of how ventilation in processing, milling or workshop areas will be addressed.

Electrical Safety

The AMWU notes and supports the CFMEU submission regarding electrical safety.

It is apparent that the general electrical regulations under the Model WHS Regulations do not readily transfer to a mine site (how, for

	<p>example, does the definition of 'electrical equipment' in Regulation 4.7.2 (2) relate to an electric shuttle car?). The use of electrical equipment underground brings with it specific hazards that are not envisaged by, or encompassed by, the General Regulations.</p> <p>Existing mining specific state electrical safety requirements must be the basis for a new Regulation in the Model Mine Safety Regulations. The National Mine Safety Framework should be requested to urgently agree on the content of the new Regulation.</p>
9.2.32-41	<p>The failure to reflect the Warden's Court findings regarding the precautionary withdrawal of mine staff is opposed. There needs to be a requirement for plans to include precautionary withdrawal, trigger action response plans and the right of a miner to withdraw to a place of safety if the mineworker reasonably believes their health and safety is at risk. The latter would be an expression of an individual's right to cease work in the Model WHS Act, as it applies to the specific circumstance of mines</p> <p>9.2.34. Emergency Plans - provision of resource - regulations need to ensure that mine operators provide minimum manning levels for Emergency Response e.g. minimum of 4 per shift rather than relying on town emergency services. The AMWU opposes the practice and moves by parts of the industry to outsource instead of providing adequate on site emergency response capability.</p> <p>Mine operators must be required to keep a register of the emergency training that has been provided.</p>
Part 9.3	
9.3.1	<p>The regulations regarding fatigue in Queensland Regulations 2001 are supported. The AMWU has concerns regarding the lack of rigorous application of these regulations. The findings of the <i>Digging Deeper Report</i> in NSW would support the need for a systemic risk management approach to control the risks associated with the organisation and hours of work which contribute to fatigue.</p> <p>9.3 Fitness for Work - It is essential that provisions for Fatigue management address factors such as the maximum hours in week/roster cycle, maximum number of shifts & rest breaks etc..</p> <p>The AMWU opposes drug and alcohol regimes especially as much of the testing does not indicate impairment, rather presence of drug or alcohol metabolites. If there is to be any testing, which must be agreed through consultation it must address impairment.</p> <p>Health Assessments (as in the Queensland Coal industry) need to apply nationally i.e. , pre-employment CBM, then only every 5 years, not allowing companies to have medicals between the 5 year period.</p>
9.4 Consultation & Workers Safety Role	<p>The roles of SSHR - Site Safety & Health Representative & ISHR – Industry Safety & Health Representative must be continued. These roles need to be extended throughout the mining industry. The regulations must make clear reference to the role of HSR e.g. referencing back to the general regulations/parent Act. Also there is a need to ensure the involvement of other workers in safety committees (currently in place in Queensland Coal Industry).</p>

<p>9.6 Notification of High Potential Incidents</p>	<p>The reporting and recording of incidents is inconsistently applied across the industry e.g. in Western Australia reporting and recording of near misses often does not occur or is not transparent. There must be an open, transparent recording and reporting processes, which are reported to the regulators (including nationally). Self regulation of reporting requirements is opposed.</p> <p>The AMWU notes and supports the comments made by the CFMEU Mining i.e.</p> <p><i>The Core Drafting Instructions stated that the Model Mine Safety Regulations “must impose an obligation on mine operators to collect, maintain and provide to the regulator information in relation to all injuries, diseases and high potential incidents to support the development and maintenance of the National Mine Safety Database as set out in the National Mine Safety Framework Implementation Plan. The purpose of the National Mine Safety Database is to facilitate reliable comparability of industry and jurisdictional data in order to improve health and safety.” The Drafting Instructions went on to set out, in an accompanying Schedule, the content required in the National Mine Safety Database.</i></p> <p>It is important that data includes information from process areas such as washing etc.</p>
<p>Other comments</p>	<p>WHS Management Systems must apply to the whole site e.g. non permanent employees must work to the WHS Management System). There are no notes or referencing to indicate how this will occur.</p> <p>Regulation 9.4.2 refers to the requirement of Mining Companies to consult on various matters. These matters fail to include variation of WHS management systems (refers to implementation: is variation, changing of a WHS covered by the word implementation?) or review or variations for the Principal Mining Hazard Management Plan. This is in contrast to the approach taken in Major Hazards Chapter 9 of the WHS regulations.</p>