

**Public comment template for Draft Work Health and Safety (Mines) Regulation**

Please send submissions by email to [consult.minesafety@trade.nsw.gov.au](mailto:consult.minesafety@trade.nsw.gov.au)

Submissions must be received by **27 June 2014**.

**Confidentiality:** Any information that you do not wish to be made available to the public should be clearly marked 'IN CONFIDENCE'. Submissions are subject to all relevant laws such as the Government Information (Public Access) Act 2009 and the Privacy and Personal Information Protection Act 1998. NSW Trade & Investment may provide extracts of submissions to other stakeholders for comment during the review of public submissions. Please indicate here by a tick  if this submission or any parts of it are provided in confidence:

Whole submission       Address and contact details       Part (please specify) .....

Name: **Greg de Nys**

Title and/or organisation (if applicable):

- Main problems:-**
- The general requirements in the WHS act/regs should be sufficient to cover all hazards in mines that are common to other industries. Ie, there is no need for mining specific regulation for these common hazards. It is noted that the WHS act/regs alone are generally sufficient to prosecute incidents.
  - The draft mines regulations have taken a step backwards in regulatory evolution. Safety process has become more prescriptive. Unfortunately, this could restrict the development of technology and processes that could provide safer outcomes for lower cost. This is not acceptable in the current cost constrained environment. Mining needs to be able to innovate quickly if required. The act and regulations need to be changed to be safety outcomes focused. Process prescription should be removed and written into Codes of Practise, or Guidelines.
  - The degree of prescription (and red lettering) in the draft regulation is unsustainable if NSW has ever any intention of harmonizing with the rest of the country. My initial survey would indicate that NSW is proposing a degree of prescription far in excess of the rest of the country.
  - The proposed changes haven't been backed up by any provided evidentiary basis or reason. Schedule 12 is the list of transitional arrangements. It is substantial, and indicative of the amount of effort (cost) of compliance. We need to know that this will generate measurable worthwhile benefit, otherwise, what's the point?
  - Seems at odds with the Government's red tape busting mantra.
  - Carefully crafted simplification could lead to better safety outcomes at a lower cost.
  - In terms of electrical safety, has there been any consideration for the use of approved auditors for new HV and Hazardous Area installations, as per Queensland?

Disclaimer:- I am not a lawyer, and I haven't had sufficient time to fully analyse and ensure the accuracy or practicality of recommendations. Comments should be accepted in this light.

**Part 1 - Comments in response to the discussion paper**

Page or section number	Discussion point and your comment

**Part 2 - Comments in response to the draft WHS (Mines) Regulation**

Clause number	Title of clause and your comment or suggestion
5 – Meaning of principal mining hazard	Duplication of terms – unnecessary complication. Combine items a, b, and i into one item – Ground or strata failure and geotechnical hazards Rename d to mobile equipment interactions Combine f, g, and h into one item – Hazardous areas, uncontrolled fire or explosion. Include extra item for Explosives
6 – appointment of mine operator	Redundant parts that add no value. Delete (2)(b), (d), (e).

7 – notification of mine operator to regulator	Redundant parts that add no value. Delete (2), (3), (4)(b), (4)(c), (5)
8 – more than one mine operator	How a mine manager chooses to manage their mine, to comply with their safety obligations must be at their discretion, so long as they meet their obligations to effectively manage safety. Delete the whole of clause 8
9, 10, 11, 12 – risk management	Part 3.1 of WHS regs covers this. Delete clauses 9, 10, 11, 12 – refer to part 3.1 of WHS regs
13, 14, 15, 16, 17, 18 – safety management system	Covered elsewhere (duplication). Delete clauses. Make reference to AS4801 or a Code of Practise for guidance on producing a safety management system. May make reference to 3rd party certification. Regulator doesn't need a copy, but they must be able to view one on demand
19	OK
20, 21 contractor info	Management of contractors should be no different in mines than any other NSW workplace. Refer to WHS regs
22, 23, 24 – hazard management plans	OK
25 – control plans	Health, mech and elec control plans adequately covered by WHS regs (no different to regular NSW industry). Delete health, mech, and elec control plans. Include control plans to address principal mining hazards
26 – contractor health and safety management system	Should be the same for all NSW industry. Delete. Refer to WHS regs.
27 – shift changeover comms	Responsibility of mine to manage this, using whatever reasonable process. Delete. Regulator is not responsible for managing mines to this level of detail.
28 – movement of mobile plant	OK
20 – conveyor belts	Covered by relevant AS and WHS regs. No extra detail required here. Delete
30 – ground/strata failure	OK
31 – Seismic activity	OK
32 – explosives	OK
33 – electrical safety	Part 4.7 of WHS regs is sufficient for industries more hazardous than mining, so should be OK for mining as well. Delete and refer to part 4.7 of WHS regs
34 – notification of high risk activities	Inefficient method of control. Notifications probably not required. What is required is detailed risk assessments and risk control plans
35 – prohibited uses	OK at this stage
36, 37	OK
38 – inspection plan	Should be no different to any other NSW industry. WHS regs sufficient
39, 40, 41, 42, 43 – air quality	OK
44, 45 – fitness for work	Covered sufficiently in WHS regs. Delete
46 – inrush hazards	Prescription prohibits technology/method improvements. Delete and include in a code of practise

47 – connecting workings	Prescription prohibits technology/method improvements. Delete and include in a code of practise	
48, 49, 50 – winding, ropes, shaft conveyances	Prescription prohibits technology/method improvements. Delete and include in a code of practise	
51 – dust explosion	Should be adequately covered in WHS regs. Delete. Include in a code of practise for Hazardous Area, explosion and fire in underground mines.	
52 – comms systems	Probably OK	
53 – ground and strata support	Probably OK	
54 – exhaust emissions and fuel standards	May be too limiting on development. Maybe need to reword, with a focus on outcomes (sufficient respiratable air so as there are no adverse health effects)	
55 – 65 – ventilation and air quality	Prescription may be too limiting on development. Maybe need to reword, with a focus on outcomes (sufficient respiratable air so as there are no adverse health effects). All to the detail in these clauses can be removed and put in a code of practise, where more information can be provided around the evidential basis for the minimum requirements. Further technological development in equipment and procedures should be encouraged, to further reduce risk in a sustainable way.	
66 – coal dust explosion 67 – spon com	Should be adequately covered in WHS regs. Delete. Include in a code of practise for Hazardous Area, explosion and fire in underground mines.	
68 – subsidence	Should be included with the clauses on ground/strata and geotechnical management	
69 – sealing	Prescription may be too limiting on development. Should be part of emergency procedures? – covered by WHS regs. Perhaps change to be outcomes focussed, with the detail in this clause transferred to a code of practise	
70 – light metal alloys	Possibly too specific for light metals. Are there other materials or combinations of materials that could cause a fire? Possibly include as part of the code of practise for hazardous area, explosion, and fire in underground mines.	
71 – 76 – ventilation and air quality – underground coal mines	Prescription may be too limiting on technology development. Maybe need to reword, with a focus on outcomes (sufficient respiratable air so as there are no adverse health effects, and no explosion risk). All the detail in these clauses can be removed and put in a code of practise, where more information can be provided. Further technological development in equipment and procedures should be encouraged, to further reduce risk in a sustainable way.	
77 – Post incident monitoring	Part of emergency procedures? Delete and add to code of practise for emergency procedures for underground coal mines	
78 – 83 – Hazardous Areas	Covered in WHS regs. Delete. Include in a code of practise for Hazardous Area, explosion and fire in underground mines	
84 – person on duty	OK	
85 – inspection plan	Prescription may be too limiting on technology development. Delete this clause and transfer info into a guideline (doesn't even deserve a Code of Practise). Regulation should be outcomes focussed, not process prescriptive.	
86 – air sampling	Should be outcomes focussed. Instead of specifying license requirements (part 9) and detailed procedures (sched 6), should nominate desired outcome. Eg Mine Owner to demonstrate (prove) that air quality meets the requirements. To do this they would need trained and competent people, adequate procedures and adequate equipment.	
87 – 101 Emergency Management	Adequately covered in WHS regs. Delete and include in a code of practise for emergency management	
102 – 107 training	Should be adequately covered in WHS regs. Delete.	
108 – 118 Health monitoring	Need to check WHS regs to ensure required safety outcomes. Change to reflect necessary safety outcomes. Process details move to code of practise or guideline.	
119, 120 – consultation	Seems to be clarification of WHS regs. Is this really needed? Delete	

121 – 126 mine survey plan	OK	
127 – incident notification	Incidents that are common to other industries should be covered by WHS regs. Eg 4c, 4d, 4e,4h, 4i, 4m, 4n, 4o, 4p	
128 – other matter notification	Most of this is OK but will vary depending on the content of the final regs	
129 quarterly reports	Should be no different to other NSW industry. Delete.	
130 notify mine operator	Do we really need this clause? Isn't the owner responsible anyway? Delete	
131 – 132 mine record	OK	
133 – 149 statutory functions	The only 'mission critical' competencies beyond normal NSW industry requirements are the Mining Engineering Manager (Quarry Manager), Ventilation officer, and Mining Surveyor. Complete re-write of these clauses:- <ul style="list-style-type: none"> <li>• Quals are nationally recognised with training and competency assessment by RTO's</li> <li>• Mining Competance Board to establish syllabus</li> <li>• Obligation is on the Mine Operator to ensure all staff are trained and competent – this is no different to any other NSW industry.</li> </ul>	
150 – 156 licenced activities	Not sure of the reason for licensing, given that the operator is required to ensure all personnel are adequately trained and competent. Can this be better addressed through existing provisions? Eg AS for hazardous area repairs, SWI's, codes of practise, and guidelines?	
157 – 160 mine safety advisory council	OK. Delete reference to specific employer groups and unions	
161 – 165 competency board	OK. Delete reference to specific employer groups and unions	
166 – 170 S&H reps	OK	
171 – 174 misc	OK if consistent with the rest of these regs, as amended	
175 reg plant	OK for items in subclause 1. Subclause 5 is somewhat excessive? Preference should be made to the Australian Standards as the repository of Good Industry Practise.	
176 serious injury	This should be no different to general NSW industry. Delete	
177 dangerous incidents	This should be no different to general NSW industry. Delete	
178 prohib notices	Why is this different to general NSW industry?	
179 corresponding laws	Why is this here? Delete	
180 fees	Should be no different to general NSW industry	
181 – 182 exemptions	OK	
Sched 1 hazard plans	Should this all be in a code of practise?	
Sched 2 control plans	Should be in code of practise. Note:- mechanical and electrical hazards are no different to normal heavy industry and deserve no extra attention	
Sched 3 High Risk Activities	Not required. Delete.	
Sched 4 prohib uses	OK. Should include provision to allow modification and addition of items on suitable review and approval.	
Sched 5 water barriers	Include in code of practise. Delete	
Sched 6 air sampling	Should be outcomes focussed, not procedural. If this is kept, it should be reworded to allow for innovation to achieve the same or better outcomes	



Sched 7 emergency plan	Should go in a code of practise, making reference to the WHS regs. Delete	
Sched 8 info in noti of mining incident	Why is this any different to info required for any other industry? – should be in WHS regs. Delete	
Sched 9 quarterly reports	Should be no different to any other NSW industry. Delete	
Sched 10 stat functions	Need to be consistent with principal mining hazards. Delete site senior executive. Elec and Mech eng managers should be competent to the satisfaction of the Mine Owner. Tradespersons should be competent to the satisfaction of the mine owner and the WHS regs (eg electrical supervisor certificate)	
Sched 11 mine safety advisory council	OK	
Sched 12 savings	The extent of these savings is indicative of the changes in the regs, and the amount of work required for compliance with the new draft regs	
Sched 13 amendments	Nothing appears significant here.	