

Staged repeal and remake of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022

Response to key issues raised during public consultation

1 September 2022

Published by the Department of Regional NSW

Title Staged repeal and remake of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022

Subtitle: Response to key issues raised during public consultation

First published: September 2022

Department reference number: RDOC22/144145

Amendment schedule		
Date	Version	Amendment
September 2022	1	First published

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Overview

The draft public consultation Regulation amends the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014. It includes proposals identified through the 2020 Statutory Review into Work Health and Safety (Mines and Petroleum Sites) laws and public consultation undertaken to date.

The objective of the draft Regulation is to protect the health and safety of workers at mines and petroleum sites. This is to be achieved by maintaining the existing provisions that have provided a fit-for-purpose regulatory framework for work health and safety to date, while improving how the Regulation is applied. Each amendment seeks to achieve one of the three objectives of government action specified in the supporting regulatory impact statement (RIS).

Mining, Exploration and Geoscience (MEG) released the draft Regulation and RIS for public consultation for 4 weeks between June 2022 until July 2022. MEG received a total of 11 formal written submissions from industry and work health and safety stakeholders, including peak bodies, mine operators, hygienists, and individuals.

MEG closely considered the feedback contained in the written submissions, some of which influenced the final Regulation. This document summarises the key issues raised in the submissions, MEG's position on each issue and how particular issues were addressed in the final Regulation.

This document follows the structure of the RIS, dividing commentary between each of the amendments. The essence of stakeholder's comments is captured below.

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Regulation – feedback and response

Exhaust emissions and fuel standards

Stakeholder's comments were general and supportive of the amendment to the exhaust and emissions fuel standards provision. Some stakeholders disagreed with the reasoning for prescribing six-monthly testing in this provision, arguing there was a lack of scientific evidence to substantiate the amendment.

Other comments focused on the operationalisation of the provision rather than raising particular issues. One stakeholder suggested they support the principle that sampling, and analysis of diesel emissions should be undertaken by a person who has been formally trained in the appropriate method and is competent.

MEG response

This amendment ensures the sampling and analysis requirements are the same for all underground mines, protecting all workers in coal and non-coal underground mines. It requires the sampling and analysis to be undertaken by a licensed person who meets the eligibility requirements.

Use of plant in a hazardous zone (explosion-protection required)

Stakeholder's comments were general and supportive of the amendment to the provision. Industry feedback suggested the inclusion of a transitional period for 'Department-approved plant.' This was of particular interest to industry stakeholders where Department-approved plant does not have a suitably certified alternative available. Industry stakeholders suggested a transitional period would provide the necessary time for operators to comply with the requirements.

Other industry comments concerned updating section and subsection clauses within the draft Regulation for accuracy and currency.

MEG response

MEG ensured the Regulation provides a six-year transitional arrangement for the phasing out of 'Department-approved plant.' MEG considers this an appropriate and sufficient approach to enable mine operators to provide to obtain alternatives that meet contemporary standards.

The six-year life date is based on the maximum in-service period for explosion-protected equipment based on AS/NZS 2290.1.

References to superseded standards

Stakeholder's comments were supportive of the amendment to superseded comments. Unsurprisingly, stakeholder's suggested MEG takes a more dynamic and flexible approach to standards in the Regulation by not prescribing standards. Instead, industry stakeholders suggested allowing mining and petroleum site operators to rely on the latest revision of standards and not be constrained by the Regulations. Other comments from industry stakeholders suggested:

- mandating review periods to regularly update the Regulation
- allowing codes and standards to be a guidance rather than mandatory
- publishing relevant standards on the Resource Regulator's website to ensure all mine and petroleum site operators comply.

MEG response

Codes and standards are a critical component of the Work Health and Safety regulatory framework. MEG is aware maintaining references to updated standards is an ongoing issue in the Work Health

and Safety (Mines and Petroleum Sites) Regulation. MEG is working to achieve a practical regulatory approach to codes and standards without diminishing health and safety outcomes.

Testing of emergency plans

Industry stakeholder's comments concerned 'addressing' recommendations from emergency services and its implications. Industry stakeholders suggested MEG adopt wording to prevent any future issues arising, such as emergency services making recommendations that are not considered appropriate by the operator. Industry stakeholder recommended replacing 'addressing' with 'consider' as an alternative or publishing additional guidance to illustrate the policy intention of this change.

Industry stakeholders also raised consultation processes as an issue. They suggested conducting a review of this process with emergency processes to ensure they could 'keep up' with demand from operators. Examples of areas included the Hunter Valley.

MEG response

MEG will clarify that the requirement to 'address' recommendations from emergency services is not a requirement to specifically adopt a recommendation, particularly if it is deemed inappropriate. The amendment is intended to help ensure mine operators consult with emergency services and address any recommendations.

The suggestion for a review of the consultation process in particular areas has merit, however, is out of scope for the remake of the Regulation. The Resources Regulator will consider this suggestion separately.

Duty to notify the Resources Regulator of certain incidents

Industry and work health and safety stakeholders had mixed views on the amendment to the duty to notify the Resources Regulator of certain incidents.

One industry stakeholder was supportive of this amendment, though was concerned if the policy intention is to broaden the scope of duties to apply to workplace exposure standards for airborne contaminants.

Another industry stakeholder noted the change in reporting carbon dioxide when detected under this amendment may result in a direct conflict with a duty under the *Work Health and Safety Act 2011*.

Some work health and safety stakeholders did not support this amendment because of its implications for testing and monitoring which is essential for ensuring the health and safety of workers.

MEG response

MEG's policy intention for this amendment is to assist the Resources Regulator to support industry reducing worker exposure to levels of dust, diesel particulate matter and airborne concentrations of a substance mixture in the workplace. The duty is limited to the detection of atmospheric concentrations of carbon dioxide, dust, diesel particulate matter and crystalline silica, though not all contaminants prescribed in workplace exposure standards for airborne contaminants.

While the amendment results in a new notification requirement to the Resources Regulator, the amendment is only requiring notification of certain incidents. MEG does not believe this is a significant regulatory burden and should not impact testing and/or monitoring,

Section 124(5) was updated to clarify they relate to detections of atmospheric concentrations with respect to the time-weighted average in workplace exposure standards for airborne contaminants. This addresses potential issues about conflicts between the Regulation and *Work Health and Safety Act 2011*.

Exemptions for certain mines

Industry stakeholders supported this amendment as it regulated gemstone mines, tourist mines and tier-3 quarries in a proportionally to work health and safety hazards. Other sections in the Regulation were identified as potential provisions for exemptions for these mines.

MEG response

MEG recognises not all risks are applicable to tier-3 quarries and their exemption aligns the regulatory of this type of operation with other exempted mines like opal mines, underground small gemstone mines or tourist mines. MEG will continue to review the Regulation to optimise its application across the diverse mining and petroleum sites that operate in NSW.

High risk activities – raise bore activity

Industry stakeholders supported this amendment. Regulatory flexibility around notice timeframes for the notification to the Resources Regulator was one of the comments raised by industry stakeholders.

MEG response

Incorporating a raise bore activity into high-risk activities in the Regulation means the Resources Regulator can review the proposed safety systems and procedures. At its discretion, the Resources Regulator may waive notice periods under the Regulation and will consider any waiver application on a case-by-case basis.

Prohibited items and substances – explosives

One industry stakeholder considered it important to include the note about underground mines and underground coal mines in the Regulation.

MEG response

As part of the implementation of the Regulation, MEG will publish guidance about this issue to provide clarity to industry about the limitations on clause 5(2) and 5(3) of Schedule 4 of the Regulation.

Sampling and analysis – general requirements

Some work health and safety stakeholders did not support this amendment because:

- testing of 80% of shifts did not have a technical or peer-reviewed academic basis
- testing requirement goes beyond the Australian Standard for sampling respirable dust
- extending any regulatory burden by requiring industry to comply with quotas that may not identify exposure to excesses of occupational lung diseases.
- extending schedule 6 sampling number requirements for non-coal mines is not proportionate to the risk for mine and quarry workers.

Adopting similar exposure groups classifications in Resources Safety & Health Queensland processes may encourage visibility of exposure to activities not listed under Schedule 6 of the Regulation.

MEG response

These amendments are a necessary step to sample and monitor for crystalline respirable silica in mines other than coal mines. MEG takes a balanced approach to ensuring workplace and worker

health and safety. This amendment is proportionate to the high risk as it aims to reduce the exposure of mine and quarry workers to harmful and deadly occupational lung diseases.

The requirements for non-coal mines to sample and analysis respirable dust will only apply when crystalline silica has been identified as a hazard at the mine. The requirement is for a minimum sampling and analysis of only five workers once a year.

Electrical engineer statutory functions

Industry stakeholders were generally supportive of this amendment. Further information was sought on the meaning of ‘supervise’ and ‘monitor’ in relation to the electrical engineer statutory function. Other issues raised concerned the application of a transition period to ensure industry had the necessary arrangements in place before the amendments commenced.

MEG response

MEG has published guidance for coal mines about statutory functions, which is directly applicable to non-coal mines. The amendments ensure consistency and replicates and applies current coal mine obligations to non-coal mines. The Resources Regulator will monitor and take proportional compliance action as necessary.

Sampling and analysis of airborne dust

Work health and safety stakeholders held mixed views on this amendment. One work health and safety stakeholder supported the amendment advocating for an extension of this position as it is not proportionate to the potential high-risk exposure of occupational lung diseases to workers.

Other stakeholders did not support this amendment because it runs counter to the risk-based approach established under the regulatory framework and applied coal mine sampling quotas under Schedule 6 of the Regulations to non-coal mines.

MEG response

MEG takes a risk-based approach worker health and safety and believe the amendments are proportional to the high-risk hazard being regulated. Additional administrative amendments to Schedule 6 of the Regulation were made to clarify sampling and analysis requirements for operators.

Professional engineering demonstration provision

Industry stakeholders made general comments and were supportive. Both individual companies and associations were interested in this amendment because of the potential greater flexibility for operators and opportunity for reducing red tape. Industry stakeholders requested further information about applications, assessment pathways and should their application be successful, the award of an exemption.

MEG response

This amendment helps further formalise the Resource Regulator’s *Innovation policy* by incorporating it into the Regulation. MEG will publish public guidance on the application, assessment process and outcomes applicable under this provision.

Suspend or cancel a practising certificate of competence

Industry stakeholders made specific comments on this amendment, and both supported and did not support this amendment. Of concern to industry stakeholders was a perceived risk of lack of transparency and procedural fairness for practising certificate holders who potentially are subject to an order suspending or cancelling their certificate. Industry stakeholders were concerned about

the risk that such a perception would impact an individual willingness to fill statutory roles when operators are experiencing skills shortages. Other more specific comments concerned:

- types of contraventions - Industry stakeholders suggested the Resources Regulator identify the potential contraventions this provision may impact. They also requested clarity that minor administrative contraventions should not result in a suspended or cancelled certificate.
- time frames for investigations - Industry stakeholders agreed a statutory timeframe should apply for the Resources Regulator to act and/or to investigate a potential contravention. Operators did not want long drawn-out investigations because of its impact on their business.
- reviewable decisions - Industry stakeholders were concerned about a potential lack of clear internal and external review pathways. Any internal reviewers were requested to have the technical competency to assess the decision being reviewed.

MEG response

MEG will provide any individual subject to a decision potentially suspending or cancelling a practising certificate procedural fairness as prescribed in the Regulation. An example of includes that the holder is given written notice and the opportunity to make representations under section 145(1) of the Regulation. The Resources Regulator's *Compliance and enforcement approach policy* will apply to decision-making about compliance actions.

In response to other specific comments:

- types of contraventions – The amendment is limited to circumstances where the contravention of a safety and health obligation could have led to a serious risk to the health or safety of a person, that is to exclude any contraventions of an administrative nature.
- timeframes - the Regulation currently prescribes timeframes relating to the cancellation of the practising certificate (section 145(3)(a) of the Regulation).
- reviewable decisions – the suspension or cancellation of practising certificate by the Resources Regulator is a reviewable decision. Any individual subject to a decision suspending or cancelling a practising certificate may have the decision reviewed internally by the Resources Regulator or externally by the NSW Civil and Administrative Tribunal.

Maintenance of competence requirement

Industry stakeholders made general comments, providing support or in-principle support of this amendment. One stakeholder was concerned that an individual's failure to comply with a direction from the Resources Regulator may result in a penalty offence and/or a ground for suspension or cancellation of a practising certificate.

MEG response

This amendment will not be included in the staged repeal and re-make of the Regulations. MEG will consider this issue at a later time.

Other comments raised

Industry and work health and safety stakeholders made submissions about other provisions, including:

- reducing prescription of or allow flexibility in control measures. Examples include amending air monitoring provisions or section 46 operation of belt conveyors.

- making amendments to improve the operation section 34 electrical safety in two ways, prescribing training, and clarifying the section does not prohibit the use of renewable energy technology at a mine or petroleum site.
- changes to wording of section 81 plant to be explosion protected about the use of electrical plants and diesel engine systems in a hazardous zone
- clarifying some sections in the Regulation for clearer interpretation.

MEG response

MEG will continue to improve the Act and Regulation and will consider all submissions and will seek industry feedback on any future amendments.