**April 2021**

# WHS (MPS) Laws amendments

The NSW Resources Regulator is seeking submissions on the **Discussion paper** on proposed amendments to the *Work Health and Safety Mines and Petroleum Sites Act 2013* and its Regulation.

#### How to make a submission

You can send questions about the reforms or the submission process to [rr.feedback@planning.nsw.gov.au](mailto:rr.feedback@planning.nsw.gov.au?subject=WHS%20(MPS)%20Laws%20amendments)

To make a submission, use this form to comment on the Discussion paper on proposed amendments to the WHS (MPS) Laws and return to:

**Email:** [rr.feedback@planning.nsw.gov.au](mailto:rr.feedback@planning.nsw.gov.au?subject=WHS%20(MPS)%20laws%20amendments)

**Post:** WHS (MPS) Laws amendments

NSW Resources Regulator

Regulatory Programs

PO Box 344 Hunter Regional Mail Centre 2310 NSW

**By the closing date: 17 May 2021**

As part of our public consultation processes, we will publish copies of all submissions on our website at the conclusion of the consultation period. Publishing all public submissions received will ensure transparency around the feedback. As a general rule, all public submissions will be published in full (excluding contact details). In exceptional circumstances, we may consider withholding the identity of a submitter when publishing their submission (i.e. if there are legitimate concerns around personal security/safety). Please advise us if you want your identify withheld, including the reasons. Your submission will be managed and retained in accordance with the *State Records Act 1998* and the *Government Information (Public Access) Act 2009*.

# Feedback Form

*\* Required field*

## Contact details

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Name\* | |  | | | |
| Email address\* | |  | | | |
| Street address | |  | | | |
| Suburb |  | State |  | Postcode |  |
| Postal address (if different from above) | |  | | | |
| Suburb |  | State |  | Postcode |  |

## Org**anisation**

|  |  |
| --- | --- |
| Are you an individual representing at organisation? | Yes  No |
| If yes, please provide the organisation’s name: |  |

## Privacy

|  |  |
| --- | --- |
| \* In making this submission I acknowledge the submission will be published by the Resources Regulator, including my identity. | |
| (If applicable) I provide the following reason/s to request my identity be **excluded** when the submission is published: |  |

## Feedback

|  |  |
| --- | --- |
| Do you have any comments on the questions below? | |
| 1. Should there be two types of investigations contained in the WHS (MPS) Act? |  |
| 1. Should persons named in causal investigation reports provided to the Resources Regulator be protected from having that information used as evidence against them in the event that enforcement action is taken? |  |
| 1. Should the function of mine SHRs be expanded beyond the HSR functions under the WHS Act and previous mine safety legislation to enable them to participate in investigations? If so, are there any limitations that may be warranted on its exercise? |  |
| 1. Do you have any concerns regarding the adoption of the amendments for appointment of industry SHRs by the Minister? |  |
| 1. Do you agree with extending industry SHRs to mines other than coal mines? |  |
| 1. Should the WHS (MPS) Act be amended to include provisions equivalent to sections 146 and 148 of the WHS Act? |  |
| 1. Should the WHS (MPS) Act be amended to amend the purpose statement for Boards of Inquiry to include ‘contributing factors’, and to explicitly allow for high potential emerging and systemic issues and the making of potential findings and recommendations to reduce the likelihood of future accidents and incidents? |  |
| 1. Should the WHS (MPS) Regulation be amended to clarify that the MPCB can appoint a person as an assessor? |  |
| 1. Is clarification required in relation to rock and coal bursts and related pressure bursts being a principal mining hazard? |  |
| 1. Are there any elements of the Global Industry Standards on Tailings Management that should be prescribed in the WHS (MPS) Regulation? |  |
| 1. Should Schedule 6 of the WHS (MPS) Regulation be amended to include sampling over 80% of a shift, require all respirable dust samples tested for silica, and include more detail on sampling of the drill and blast area, as well as areas involving mobile equipment and maintenance, coal handling preparation and mobile crushing plant? |  |
| 1. Should the WHS (MPS) Regulation be amended to require sampling and analysis of respirable quartz at non-coal mines, similar to the requirements in clause 86 and Schedule 6? |  |
| 1. Should the WHS (MPS) Regulation be amended to provide certain exemptions for small quarries? |  |
| 1. The Resources Regulator is currently addressing this issue of clarification of safety devices like oxygen candles in refuge chambers through guidance. Should the Resources Regulator’s position be made explicit in the WHS (MPS) Regulation? |  |
| 1. Should the WHS (MPS) Regulation be amended to include a ‘note’ under clauses 5(2) and 5(3) of Schedule 4 to refer the reader to the defined terms of ‘underground coal mine’ and ‘underground mine’ in clause 3 of the WHS (MPS) Regulation? |  |
| 1. Should emergency sealing in clause 68 of the WHS (MPS) Regulation make provision for re-entry and, if so, include an airlock? |  |
| 1. Should the emergency plan include more detail in relation to testing of, and training in, the emergency plan and mine rescue? What additional detail should be included? |  |
| 1. Should the WHS (MPS) Regulation be amended to include a requirement for mine operators to display aspects of the escape and rescue plan, including exits, refuges, firefighting equipment, communications and oxygen stations and to ensure mine workers have a reasonable opportunity to utilise the exits during periodic training? |  |
| 1. Should the WHS (MPS) Regulation be amended so that an automatic update provision (similar to that under clause 78) is applied to all references to standards in the Regulation? |  |
| 1. Is it appropriate to continue to refer to standards or should the relevant parts be prescribed within the WHS (MPS) Regulation? |  |
| 1. Should the WHS (MPS) Regulation be amended to enable a professional engineering demonstration of an alternate means of compliance that entails a level of risk equivalent to, or better than, complying with a prescribed standard? |  |
| 1. Is the Resources Regulator’s *Innovation policy* sufficient for enabling consideration of innovations prevented by legislation or technical standards? |  |
| 1. Do you support the proposed amendments to the explosion-protection provisions in clauses 78(2) and 78(3) of the WHS (MPS) Regulation to make it explicit that electrical plant used in an underground coal mine must **comply** with the requirements of the certificate of conformity or Departmental approval? |  |
| 1. Do you support the proposal to amend clause 80 of the WHS (MPS) Regulation to incorporate the provisions outlined in the class exemption titled *Work Health and Safety (Mines and Petroleum Sites) Exemption (Use of Cables in Hazardous Zones) 2020* as published in the [NSW Government Gazette No 171 of 7 August 2020](https://www.resourcesregulator.nsw.gov.au/__data/assets/pdf_file/0012/885486/NSW-Govt-Gazette-Exemption-WHS-MPS-Use-of-Cables-in-Hazardous-Zones-3-August-2020.pdf)? |  |
| 1. Should the wording in clause 93 of the WHS (MPS) Regulation be amended to be consistent with clause 89 to ensure that consultation with emergency services is included when the emergency plans are tested? |  |
| 1. Do you agree with amending 128(5) of the WHS (MPS) Regulation to make exceedances of diesel particulate matter and substances and mixtures specified in clause 50 of the WHS Regulation a high potential incident? |  |
| 1. Should Schedule 3 of the WHS (MPS) Regulation be amended to include raised bore activity as a high risk activity? |  |
| 1. Should the WHS (MPS) Regulation be amended to include a requirement that at least one person who has undertaken safety training as specified by the regulator be present at an opal mine when mining activity is taking place? |  |

## Submitting the form

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