

STATUTORY REVIEW OF THE WORK HEALTH AND SAFETY (MINES AND PETROLEUM SITES) ACT 2013 AND REGULATION

Discussion Paper - Published March 2020

SUBMISSION BY THE ASSOCIATION OF PROFESSIONAL ENGINEERS, SCIENTISTS AND MANAGERS AUSTRALIA

1. This submission is made by the Association of Professional Engineers, Scientists and Managers Australia in relation to the Discussion Paper published by the NSW Resources Regulator on March 2020 and titled *“Statutory Review Of The Work Health And Safety (Mines And Petroleum Sites) Act 2013 And Regulation”*.
2. The Collieries Staff Division is a Division of the Association of Professional Engineers, Scientists and Managers Australia, which trades as the Collieries’ Staff and Officials Association (**“the Association”**). We represent staff working in the coal mining industry working in critical roles such as deputies, undermanagers, surveyors, control room operators and Engineers.
3. The Association has surveyed its membership in respect of the matters raised by the Discussion Paper and makes the following submissions.

Safety Management Systems, Principal Hazard Management Plans and Principal Control Plans

4. Paragraph 7.5 of the Discussion Paper refers to Specific Control Measures being utilized in mines and petroleum sites. The relevant provision is contained in clause 9 of the *Work Health and Safety (Mines) Regulation 2014 (NSW)* which states:

“A person conducting a business or undertaking at a mine must manage risks to health and safety associated with mining operations at the mine in accordance with Part 3.1 of the WHS Regulations.”

5. Clause 43 adds to this obligation with respect to worker fatigue:

“In complying with clause 9, the mine operator of a mine must manage risks to health and safety associated with worker fatigue”

6. Having sought feedback from our membership, the Association is concerned by the operation of this clause and its implementation by mine managers.
7. Of specific concern are widespread reports that employees find themselves unable to take designated meal breaks. Examples of this de-identified feedback from our members include the following:

“I don’t get a meal break at my current work place, I have to eat while working. I am starting at a another mine soon, not sure what will be required there.”

“I have been a Control room operator for close to [REDACTED] in that time i have never had a dedicated meal break in a 12hr rotating shift. I have raised this issue without change from Management”

8. Other members have reported that fatigue has been exacerbated by employees being required to work before and after shifts, particularly where those employees are working 12 hour shifts. For example:

“Of concern is shift lengths, particularly on the weekend roster. Given the expectation that stat officials and shift engineers work hours either side of the normal shift. I work at [REDACTED] where the weekend shift is 12 hours. However, as a deputy I was expected to start at least 40 minutes prior to the workforce, and generally finished 20 minutes after. Add to this, a one hour commute each way to work and my day is 15 hours Friday, Saturday and Sunday. Undermanagers and Engineers do more than that. We are remunerated for 12 hours only.”

9. We have also seen that where the management of fatigue is contemplated as part of a specific control measure, these risk management systems are not implemented in practice for all employees, such as Control Room Operators:

“I don't believe our fatigue management plan is working for the CRO' s here. Site rosters were risk assessed a couple of years ago but the Control Room roster wasn't included. A lot of the controls from that risk assessment & subsequent fatigue management plan guidelines aren't implemented in the Control Room.”

10. Members have reported inconsistency in the factors that are addressed in these plans. For example, travel time is considered by some employers and not others in developing fatigue management plans. Where such factors are considered by the plan, the application of that plan can be inconsistently applied in favour of the needs of the business. For example, our membership provided the following feedback:

“Travel times to site need to be included [in the development of fatigue management plans]... There is provision for this (taking travel time into account) in our fatigue management plan but it seems to be overlooked or not strictly adhered to when planning rosters, overtime etc.”

11. From the above, it appears that there are issues with employers adhering to the requirement of clause 43. We submit that these issues can be distilled as follows:
 - a. It is unclear as to whether employers are developing comprehensive control measures in respect of staff fatigue in compliance with clause 43.
 - b. It appears that these plans are applied:
 - i. Inconsistently;
 - ii. Incorrectly;

- iii. On an ad-hoc basis;
 - iv. As instructive rather than prescriptive; or
 - v. Not at all.
- c. The key areas in which staff fatigue issues have been identified appear to be:
- i. Employees, particularly those employed in Control Rooms as Control Room Operators, being unable to take dedicated meal breaks;
 - ii. Shift lengths, inclusive of pre and post shift time and commuting being unreasonable and detrimental to staff fatigue;
- d. Staff fatigue, particularly for employees engaged in safety-critical roles, has the potential to lead to catastrophic results.

12. We submit that the Independent Review should consider the issue of staff fatigue as a high priority to be addressed as part of this process. Specific measures to be considered in addressing this issue could include:

- a. Mandating of specific matters to be included in specific control measures in order to satisfy clause 43, such as shift lengths, meal breaks, availability of relief staff, rostering and consultation.
- b. The development of draft model clauses for the insertion into specific control measures to ensure these matters are addressed.
- c. Consideration of applicable enforcement measures.
- d. Given the potential impact of staff fatigue on safety-critical roles, consideration of the inclusion of staff fatigue as a principal mining hazard for the purposes of principal hazard management plans or as a prescribed principal control plan.

13. We have also received feedback from members that the Review should consider the circumstances and methods by which these plans are reviewed. A common theme was the impartiality of these reviews, which we submit should be considered. For example, the below feedback from our membership captures this concern:

"In respect to PHMP, or more specifically a mines review of their systems ie 3 Yearly or after a major incident, I would like to see a board similar to a board of examiner's conduct these reviews. I feel that in house reviews are often overly influenced by the corporate arm of a company which often influences tighter controls. Also mines with complex systems and extreme conditions need a more independent body other than in house. The same suggestion would be when a failure of a PHMP occurs it

automatically triggers a review of the system, again the review in my mind needs to be conducted by a cross section of internal and external persons as these systems are to control major hazards and sometimes these controls fail without loss of life they could very well have had a much dire outcome. So an independent review I believe is more robust and transparent way of review.”

Emergency Management

14. The key feedback received from members in respect of Emergency Management is that Control Room Operators believe additional training would greatly assist their ability to fulfil their requirements under emergency plans.
15. Clause 95 of the Regulations covers the responsibility of the mine operator in training employees under emergency plans:

Training of workers

The mine operator of a mine is to ensure that workers at the mine are trained in relation to the emergency plan:

- (a) before commencing work at the mine, and*
- (b) as soon as is reasonably practicable after any significant revision to the plan.*

Maximum penalty:

- (a) in the case of an individual—\$6,000, or*
- (b) in the case of a body corporate—\$30,000*

16. Given the response of our members, the Review may want to consider the creation of guidelines as to what this training may entail to ensure it is thorough, targeted, relevant and comprehensive.
17. The Review may also want to consider an additional subsection (c) to clause 95 that training be conducted periodically to ensure ongoing competence and awareness.

Survey Plans

18. The Association would also seek to make submission in respect of Part 7.10 of the Discussion Paper in relation to Survey plans.
19. In 2017, the Association undertook a survey of Mining Surveyors. The Survey garnered 106 responses with the following profile:
 - a. 76% coal, 24% metalliferous;
 - b. 56% underground, 44% open cut;
 - c. 41% work over multiple mine sites, 59% one mine; and
 - d. 49% registered Mine Surveyors; 51% not registered.

20. The key issues that were raised by the respondents to survey included:

- a. Statutory obligations – resourcing, understanding and value;
- b. Continuing Professional Development; and
- c. Impacts of emerging areas of risk;

21. With regards to statutory obligations:

- a. 36% thought that their workplace was not resourced well enough for them to meet their statutory obligations properly.
- b. 53% thought that their supervisors did not fully understand the extent of the surveyor's statutory obligations.
- c. 63% stated that they could not fulfil their statutory obligations in a 38 hour work week.

22. Regarding Continuing Professional Development:

- a. Only 55% of NSW Registered Surveyors thought that staff reporting to them got enough paid CPD to support the Registered Surveyor;

23. The following areas of risk were identified:

- a. 15% of respondents said the key area of emerging risk was the impact of production demands and inadequate staffing/resourcing when compared to their statutory obligations.
- b. 69% of respondents had observed increased surveyor casualization and 71% thought it had a negative impact.

24. Respondents also anecdotally related their concerns regarding the safety implications of inadequate resourcing, auditing and training. For example, in response to a question regarding respondent concerns, the following responses were received:

“The continual push for greater production and the lip service that is paid towards safety. It seems that they say safety comes first but in reality it does not...”

25. In essence, the findings of the survey found that surveyors were concerned by:

- a. The lack of time and resources provided to them in order to satisfy the statutory functions;
- b. Being required to endorse the accuracy of plans on short timeframes to meet business needs.

- c. Increasing casualization of the workforce leading to less continuity of employment and poor record keeping.
 - d. That their work was misunderstood by management.
 - e. Staff reporting to Surveyors like Assistant Surveyors were not provided sufficient training.
26. The issues outlined in the 2017 Survey continue to affect our members in their daily work.
27. Clause 122 of the Regulations states the requirements in relation to survey plans. It outlines the details required by a survey plan, and the obligations placed on the different parties.
28. Subsections (8) and (9) place obligations of the mining surveyor to take reasonable steps to ensure the accuracy of the plan and inform the mine operator of any variations between the plan and the mine workings. These subsections are subject to individual and corporate penalties.
29. Given the concerns that have been raised by our members, we submit that this Review should consider whether additional requirements to this clause would be appropriate in order to satisfy the overarching goal of ensuring health and safety through the approval of an accurate survey plan. These requirements could include:
- a. That a Mining Surveyor be provided with sufficient time to complete a survey plan under this clause.
 - b. An obligation on the employer to maintain adequate staffing of Mining Surveyors to ensure safe working practices.
 - c. An obligation on an employer to provide 15 hours of paid CPD to staff reporting to Mining Surveyors, like Assistant Surveyors, to ensure that those staff are adequately trained to assist in the Surveyors in the execution of their safety critical statutory role. This should be identified as critical work.
30. The Association further notes that the role of Mine Surveyor is listed a statutory function but not a key statutory role under clause 135. We submit that this Mining Surveyors should be included as key statutory functions under this clause.
31. This would reduce uncertainty by ensuring that only one person is nominated in this statutory role and that there would be clarity and certainty with regards to responsibility and accountability.
32. The Association thanks the Regulator for this opportunity to make submissions on behalf of its members and would welcome the opportunity to expand further if this would assist.

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