MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

VOLUME ONE

1 Safe mines: safe workers

Implementing recommendations of the Royal Commission on the Pike River Coal Mine Tragedy

Discussion document
May 2013

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Contents

Minister's foreword

On 19 November 2010 an explosion at the Pike River coal mine on the West Coast of New Zealand's South Island resulted in the deaths of 29 workers. This tragedy shook New Zealand to the core. It set off a wave of substantial government actions in response.

Ministers established the Royal Commission on the Pike River Coal Mine Tragedy to inquire into and report on what happened and what should be done to prevent future tragedies.

In October 2012, the Royal Commission released its report, making 16 recommendations to address the failures that it had identified as contributing to the Pike River disaster.

The Government announced it was committed to implementing all responses to the recommendations by the end of 2013 – through a new regulatory regime for all mining, and the establishment of a new stand-alone Crown agency for workplace health and safety.

This important work is the legacy we owe to the memories of those who lost their lives at Pike River and to their families. We all need to make sure we learn the lessons of the past and that we are doing everything we can to protect New Zealanders from injury and death when they go to work each day. We also need to build the regulatory foundation for a viable mining industry that will provide safe and productive jobs for New Zealanders into the future.

This is not a job for government alone. Mine operators and the people who work in the industry also have a responsibility and a critical role to play.

This discussion document invites you to comment on proposals for a new regulatory framework for mining. The proposals have been developed with the assistance of an independent group of New Zealand and Australian mining experts to ensure that they will bring health and safety in the New Zealand mining industry into line with international best practice.

These proposals represent the most significant change to the health and safety regime for mining in over 20 years, and we welcome input from the public and people who have an interest and a stake in the mining industry and workplace health and safety issues.

Hon Simon Bridges
Minister of Labour

Introduction

The proposals we are consulting on

1 This discussion document sets out proposals for the implementation of a number of the recommendations of the Royal Commission on the Pike River Coal Mine Tragedy (the Royal Commission). The Government has committed to implementing the Royal Commission's recommendations by the end of the year.

2 We seek your feedback on proposals in the following areas:

- Broadening the Royal Commission's recommendations concerning underground coal mines to cover all types of mining operation (chapter one)
- A new regulatory approach for mining, requiring processes for hazard management in mining operations (chapter two)[1]
- Strengthened training and competency requirements for safety critical roles in mining operations (chapter three)[2]
- Increased worker participation in health and safety in mining operations (chapter four)[3]
- Improvements in emergency preparedness by mining operations and in the provision of mines rescue services and emergency management of incidents (chapter five)[4], and
- Transitional arrangements to allow duty holders time to comply with the new requirements (chapter six).

3 We already have separate processes underway to address the Royal Commission's recommendations concerning the establishment of a new health and safety regulator, the Crown minerals regime, guidance for directors, the development of a number of codes of practice, and recommendations that were referred to the Independent Taskforce on Workplace Health and Safety. You can find out more about this in chapter seven, which updates the Government's implementation plan for all of the Royal Commission's recommendations, includes further information on the recommendations outside the scope of this discussion document, and details the work already completed.

How we developed these proposals

4 The proposals in this document have been developed by the Ministry of Business, Innovation and Employment (the Ministry, or MBIE). In line with Royal Commission recommendations we have looked to models in the Australian mining states (mainly Queensland and New South Wales) for guidance. In developing the proposals we have been assisted by an Expert Reference Group, comprised of mining and health and safety experts from New Zealand and Australia. While the Expert Reference Group provided feedback on the general approach, the detailed proposals in this document are the Ministry's. We also did some initial testing of proposals with industry, union representatives and the Mines Rescue Service before undertaking this more extensive consultation.

Timetable for law reform

5 Your submissions on the proposals in this document will be used to inform the development of the new regulatory framework for mining. This framework will include obligations under the Health and Safety in Employment Act 1992 (the HSE Act), the Mines Rescue Trust Act 1992 (the MRT Act) and the new mining regulations, as well as codes of practice and other guidance material.

1. Recommendation 2
2. Recommendations 8, 9, 10 and 12
3. Recommendation 11
4. Recommendations 13, 14, 15 and 16

6 Your feedback on most of these proposals will contribute to the development of the new mining regulations. We will consult with industry on the draft regulations in August/September and the new regulations will come into force in December 2013. There will be transitional arrangements to give duty holders time to comply with the new requirements (see chapter seven for more detail).

7 The process for our proposals concerning worker participation and the Mines Rescue Service is slightly different. Because some of these proposals will require changes to the HSE Act and the MRT Act, they will need to be considered by Parliament which takes more time.

8 In order to meet the Government's commitment to implement the Royal Commission's recommendations by the end of this year, the Bill containing the necessary legislative changes (the Pike River Implementation Bill) will need to be drafted and introduced at the end of June, when this consultation is still open. However, your feedback on proposals requiring legislative change (including worker participation and the Mines Rescue Service) can still be taken into account when officials advise the Government and the parliamentary select committee considering the Bill, before it is passed into law. You can also make a submission on these issues directly to the select committee if you wish.

9 The diagram on page seven sets out the timetable for the development of the regulations and the passage of the Pike River Implementation Bill, and other implementation work streams.

How to use this document

10 If you wish to get a general idea of what we are proposing we suggest that you focus on the summary table at the beginning of each chapter. This is followed by more detailed information, which sets out what the Royal Commission recommended, key issues and how we propose to implement these recommendations. Throughout this document, we have included a list of questions you may wish to consider when making a submission. Some chapters also have technical appendices with more details of the proposals: these are located in volume two.

Have your say

"The changes recommended by the commission rest firmly on the principle that health and safety in New Zealand can be improved only by the combined efforts of government, employers and workers."

2012 Report by the Royal Commission on the Pike River Coal Mine Tragedy, Volume 1 p13

11 We welcome and encourage your feedback on the proposals in this discussion document. Information on how to make a submission is provided on the following page.

How to have your say

Make a submission by 1 July 2013

The Ministry seeks written submissions on the proposals in this discussion document. The closing date for submissions is 1 July 2013.

You can:

- Complete your submission online: **www.mbie.govt.nz/about-us/consultation**
- Email it to: **MiningConsultation@mbie.govt.nz** , or
- Post it to: Pike River Implementation Team, Discussion Document Submissions, Ministry of Business, Innovation & Employment, PO Box 1473, Wellington.

If you plan to email or post your submission, you may wish to use the submission form on page 98, which can also be downloaded from **www.mbie.govt.nz/about-us/consultation**

Attend a workshop in May and June

We will also be hosting a number of consultation workshops in May and June. Please see the website at **www.mbie.govt.nz/about-us/consultation** for details.

The workshops are open to anyone and will provide an opportunity to discuss these proposals face to face.

Your submission may be made public

The Ministry intends to post all written submissions on the website at www.mbie.govt.nz, except for any material that may be defamatory. We will consider that you have consented to this unless you clearly specify otherwise in your submission.

All submissions are also subject to the Official Information Act 1982. Please set out clearly in your submission if you object to the release of any information in the submission, and in particular, which part (or parts) you consider should be withheld together with your reasons for withholding the information. The Ministry will take such objections into account when responding to requests under the Official Information Act 1982.

Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in conjunction with the matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that the Ministry may publish.

Pike River Implementation Programme 2013

WORKSTREAM	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
			Passage of Bill through the House					
New workplace health and safety (WHS) regulator	Cabinet decision and drafting of Health and Safety (Pike River Implementation) Bill	Pike River Implementation Bill Considered by Cabinet mid June Bill establishes new WHS Regulator and amends HSE and MRT Acts	Introduction of Bill to the House and referral to Select Committee		Second Reading, Committee of the House, Third Reading Bill splits into 3 Acts: Crown entity legislation HSE amendment Act MRT amendment Act			New WHS Regulator established
HSE and Mines Rescue Trust (MRT) Acts Amendments								
Consultation on regulatory proposals		Consultation period Late May Document released Consultation until end June	Amendments arising from consultation process feed in at Select Committee stage					
Mining regulations			MBIE considers submissions on the Consultation Document. Regulations drafted July/August for Cabinet review mid-August		Industry Consultation on draft regulations (6 weeks) until end September	MBIE considers submissions and amendments drafted	Final regulations approved by Cabinet in November	
Codes of Practice	Drafting of Ventilation, Electrical, and Fire & Explosion Codes of Practice, including Working Group reviews and review by Chief Inspector of Mines by mid July Small mines and hazard management guides published end June				Technical peer review and drafting of any consequent amendments by end August	Public consultation during September/ October	MBIE considers submissions Codes approved by Minister by December Remaining codes of practice developed during 2014/2015	
MRT levy regulations			Consult with industry on proposals July				New regulations in force by 1 April 2014	
Health and Safety at Work Bill	Policy work and legislative drafting process to implement the Government's response to the recommendations of the Independant Taskforce on Workplace Health and Safety. (The Taskforce reported back on 30 April.)						Health and Safety at Work Bill introduced into the House	

CHAPTER ONE

01

Broadening the Royal Commission's recommendations to all types of mining

What we propose:

The new regulatory regime covers the mining industry generally, not just underground coal mines	This extends the scope of the Royal Commission's recommendations, which only concerned underground coal mines. All mines – underground coal, underground metalliferous, opencast coal and opencast metalliferous – as well as some quarries and tunnels will be covered.

Mining operations covered by the new regime

1 The Royal Commission's recommendations concerned underground coal mines, although it did note that a number of its recommendations could be applied more generally.

2 The Government has decided that the new regulatory regime should cover the mining industry generally, not just underground coal mines. We propose to include the following types of "mining operation" (we refer to these as being "within scope"):

- Underground coal mines
- Underground metalliferous mines
- Opencast coal mines
- Opencast metalliferous mines
- Quarries with certain features (described below), and
- Tunnels with certain features (described below).

3 This will include operations involving the extraction of coal, alluvial and quartz gold, and iron sands, and the specified quarries and tunnels. Technical appendix four (in volume two) includes a more detailed definition of mining operation that we propose to use in the new mining regulations.

4 Please note that the proposals in this document generally apply to all mining operations that are within scope. However, you will see that the application of some proposals will depend on the type of mining operation, and whether a particular principal hazard is present. For example, different emergency management facilities and equipment are required for underground and opencast mines, because of the different hazards in those mines.

Quarries within scope

5 Quarries (operations for the extraction of minerals other than coal or metals) with two or more of the following features will be covered by the new mining regime:

- More than four mine workers ordinarily working at the quarry at any one time (see description of mine worker below)
- Quarry faces of more than 3.5 metres (measured from the lowest to the highest point)
- Ground or underlying working surfaces where the risk of failure or subsidence is likely to endanger places where people may be present, or ground movement is likely to harm or kill anyone, or these features are independently assessed by a competent person as constituting a significant hazard, or
- Commercial operations providing over 100,000 tonnes per year.

6 The regulator would have the discretion to determine that a quarry is in scope, even where none of the above features are present. This is to address situations where a quarry may not quite fit the criteria, but the regulator considers that the operation is sufficiently hazardous.

7 Technical appendix four (in volume two) includes a proposed definition of quarry, for inclusion in the new mining regulations.

Tunnels within scope

8 Tunnelling operations that involve the extraction of fill, with one or more of the following features, will be covered by the new mining regime:

- More than two mine workers ordinarily work underground at any one time (see description of mine worker below)
- Explosives are used underground

- An operation, with or without ground cover, for the purpose of making a shaft greater than 15 metres deep, or a tunnel that is 15 metres long with a cross-sectional dimension greater than 2.5 metres, or
- An operation with the potential for flammable gas levels of greater than 0.25 per cent by volume in any working area.

9 The regulator would have the discretion to determine that a tunnel is in scope, even where none of the above features are present. This is to address situations where a tunnel may not quite fit the criteria, but the regulator considers that the operation is sufficiently hazardous.

10 Technical appendix four (in volume two) includes a proposed definition of tunnel, for inclusion in the new mining regulations.

Quarries and tunnels out of scope

11 Quarries and tunnels that do not meet the definitions above (i.e. quarries with one or none of the listed features and tunnels with none of the listed features) will be outside the scope of the new mining regime, unless the regulator exercises its discretion to include them. This is because the activities carried out in these quarries and tunnels are not considered to be hazardous enough to justify applying the new and more stringent requirements. However, operators of these quarries and tunnels still have to meet their obligations under the Health and Safety in Employment Act (the HSE Act).

New responsibilities for mine operators

12 Operators of mining operations covered by the new regulatory regime will need to:

- Meet their existing obligations under the HSE Act, including the general duty to ensure a safe workplace through the management of hazards
- Comply with new hazard management processes and strengthened minimum standards (discussed in chapter two)
- Prepare principal hazard management plans (where "principal hazards" exist), and principal control plans (discussed in chapter two)
- Meet new requirements for emergency preparedness and management (discussed in chapter five)
- Pay the levies that fund the Mines Rescue Service (discussed in chapter five)
- Ensure that new safety critical roles, such as the site senior executive (discussed in chapter two), are filled
- Ensure that their workers meet the new competency requirements (discussed in chapter four), and
- Comply with strengthened requirements for worker participation in health and safety (discussed in chapter four).

All mine workers will be covered

13 Everyone who works in a mining operation within scope will be covered by the new requirements for worker participation, hazard management, training and qualifications, and other safeguards (such as medical checks). This will include individuals who are employees, contractors, subcontractors, the employees of contractors and subcontractors, and labour hire workers. It is intended to cover persons engaged in mining related activities who come into contact with hazards, not those engaged in ancillary activities such as administration or catering services.

Q: Including all types of mining in the new regime

What do you think?

- Do you agree with the proposed coverage of the mining industry? What changes would you suggest, and why?
- In particular, do you agree with the proposed features for tunnels and quarries that would be covered by the new regulatory framework? What changes would you suggest, and why?
- In making your submission on the proposals in this chapter you may wish to refer to the proposed definitions for mining operation, tunnel, quarry, and mine worker, which are set out in technical appendix four (located in volume two).

CHAPTER TWO

02

A new regulatory approach

What we propose:

A new set of regulations for the mining industry	The two existing sets of regulations will be replaced. These are: › The Health and Safety in Employment (Mining Administration) Regulations 1996, and › The Health and Safety in Employment (Mining-Underground) Regulations 1999 The new regulations will apply to "principal hazards", where there is the potential for multiple fatalities. Mine operators will still have obligations to manage less hazardous activities in accordance with existing obligations under the Health and Safety in Employment Act 1992.
Processes for managing hazards, and necessary controls, will be set out in regulation	The regulations will set out processes for managing principal hazards. Existing minimum standards (also known as outcome requirements) will also be strengthened in a range of key areas. Principal hazards will include, but are not limited to: › Ground/strata control › Inundation and inrush › Mine shafts and winding operations › Roads, other vehicle operating areas and traffic management › Air quality, airborne dust and other contaminants › Fire and explosion › Gas outbursts › Explosives › Spontaneous combustion, and › Tips, lagoons, dams and voids Mine operators will have obligations in relation to all principal hazards, where there is the potential for multiple fatalities, not just those listed above.
All mines must have formal health and safety management systems	Systems must include "principal hazard management plans" for every principal hazard at a mine. Processes that can address a number of hazards, such as ventilation, electrical and mechanical engineering, and emergency response, will be set out in "principal control plans". Workers must be involved in the development of the plans. The plans must be reviewed regularly, independently audited at least every three years, and be available for review by the regulator. Risk assessment will be a key aspect of health and safety management systems.

New safety critical positions are established	Mine operators will need to appoint people to new roles that will contribute to health and safety. These will include: › The site senior executive – the person responsible for ensuring that a mine operator meets its obligations to manage health and safety › New technical specialist roles to ensure mine operators have the expertise to manage hazards – these are ventilation officer, electrical engineering manager, mechanical engineering manager, and supervisor. Not all positions will be required for all types of mining operation. The required competencies for these new roles are discussed in chapter three on training and qualifications.
Increased involvement by the regulator	The recently established High Hazards Unit will transfer from the Ministry to the new workplace health and safety regulator. Mine operators will need to submit their documented health and safety management processes to the regulator for review, and report high-risk activities and safety critical incidents to the regulator.
A mining sector advisory group is established	A mining sector advisory group will be established to provide advice to the regulator on implementing the new regulatory framework. Membership will include representatives from different types of mining operation, and worker health and safety representatives (union and non-union).

These proposals address the Royal Commission's recommendation to urgently establish an effective regulatory framework for mining, based on the approach taken by the Australian mining states (recommendation 2).

Other elements of the new regulatory framework, concerning training and qualifications, worker participation, and emergency preparedness, are discussed in later chapters.

The technical appendices for this chapter (in volume two) provide more detailed information on the proposals. This includes:

› A draft table of contents for the new mining regulations (appendix one)
› Tables setting out the processes and standards that would need to be addressed in each principal hazard management plan and each principal control plan (appendix two and three)
› Key definitions that we propose to use in the regulations (appendix four)
› A timetable for the development of approved codes of practice (appendix five), and
› A list of matters to be included in a mine record (appendix six).

Regulation of the mining industry is essential to ensure that those who work in it are kept safe. The regulatory framework for mining – the combination of requirements set out in the Health and Safety in Employment Act, regulations, approved codes of practice, and guidance – needs to set clear expectations and processes for the management of hazards. The framework also needs to ensure adequate oversight by the regulator. The existing regulatory framework is not consistent with this international best practice.

We propose:

- A new regulatory approach for mining, with stronger hazard and risk management
- New safety critical roles that would be mandatory at mining operations, and setting out the functions for all safety critical roles in the mining regulations, and
- Establishing a mining sector advisory group.

A new regulatory approach, with stronger hazard and risk management

02

The Royal Commission recommends:

An effective regulatory framework for mining should be established urgently, based on the approach taken in the Australian mining states, to address the following issues:

- The removal of the "all practicable steps" qualification from the duty to ensure health and safety, as it leads to ambiguity and imprecision
- The need for better health and safety information to be provided by the mine operator to the regulator
- Requiring mine operators to have comprehensive and auditable health and safety management systems
- Creating new safety critical roles at mines
- Defining standards for ventilation control devices
- Defining standards for underground gas monitoring
- Prohibiting the placement of main fans underground and requiring them to be protected against explosions and other hazards
- Clarifying the restricted zone within which electrical equipment requires protection, and
- Updating electrical safety requirements in the light of new technology.

Key issues

1 The key issue that underlies these Royal Commission recommendations is the need for the mining regulations and associated codes of practice to set clear expectations and processes for the management of hazards, so that mine operators know how to manage hazards and meet their legal obligations to keep their workforce safe.

2 The Royal Commission found that the New Zealand mining regulations were inconsistent with international best practice, in not setting clear expectations and processes for the management of hazards such as methane and carbon monoxide, electricity in combustible atmospheres, and strata control. It found failures in the critical ventilation, engineering and electrical systems of the Pike River mine, which it attributed to deficiencies in the regulations. The Royal Commission recommended that these matters should be subject to mandatory requirements, including the requirement to plan and document how hazards are dealt with.

3 The Royal Commission also found that there was inadequate oversight of mining operations by the regulator. Problems included the inability to audit the systems and processes that led to failure. Ambiguity in the phrasing of the minimum standards in the regulations also made enforcement difficult.

4 To address the above problems, the Royal Commission suggested that New Zealand create a new regulatory regime modelled on the more prescriptive process-based regulations adopted by the Australian mining states, with necessary amendments for the New Zealand context. The new system should require formal health and safety management systems to be put in place and with clear accountabilities.

5 The Royal Commission did not provide guidance on how to modify the Australian approach for New Zealand conditions, nor did it address the issue of what level of detail should be prescribed in regulations and what should be dealt with in codes of practice.

6 The approach recommended by the Royal Commission is consistent with the HSE Act, which describes the outcomes expected of duty holders, including safer workplaces through the management of workplace hazards. The difference is the level of prescription about how these outcomes are to be achieved.

What we propose

A NEW REGULATORY APPROACH

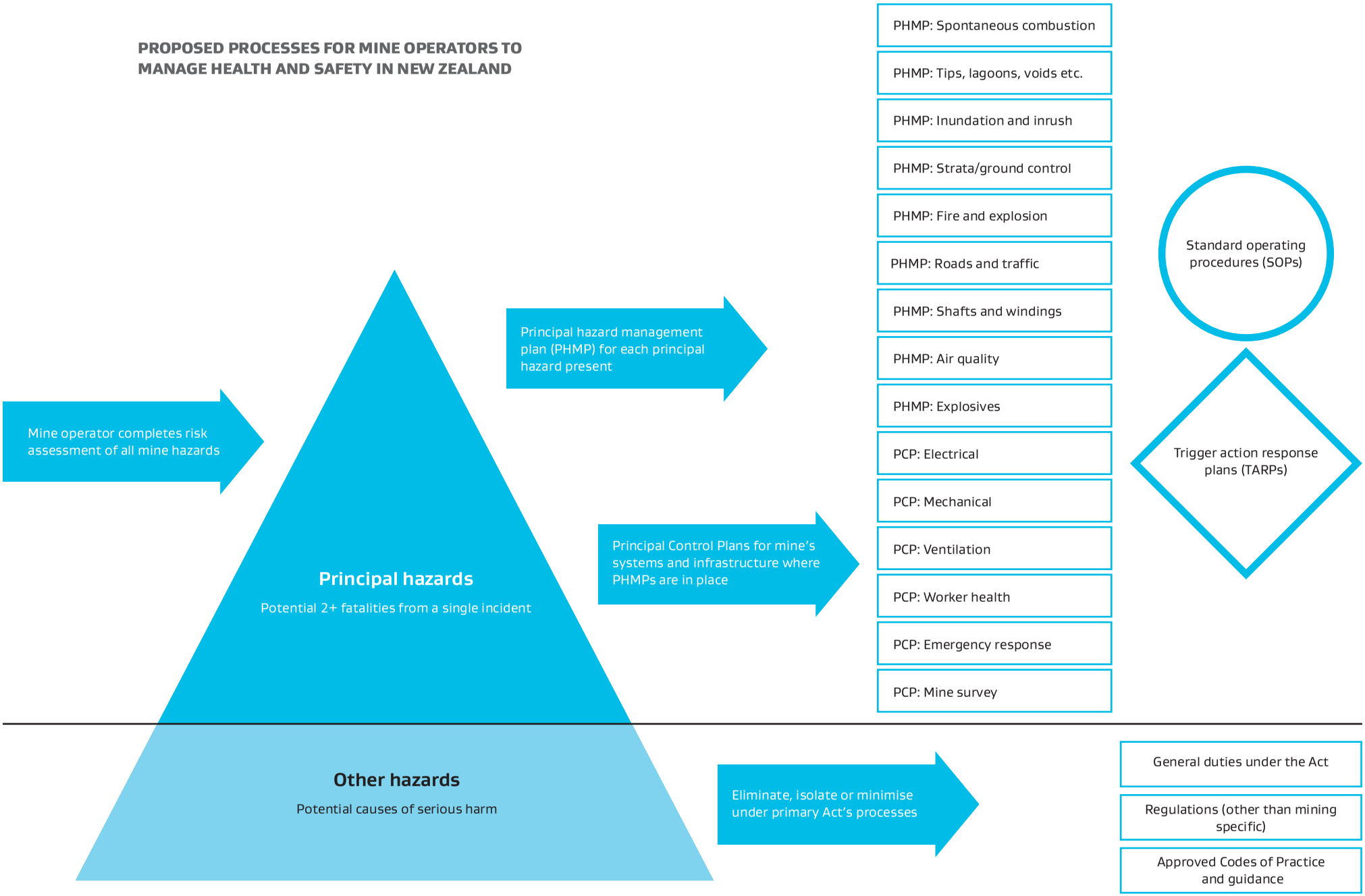
7 A new set of mining regulations will be developed to replace the existing regulations[5]. In line with international best practice, the new regulations will include detailed processes for managing hazards and risks. Minimum standards for managing hazards will also be strengthened, clarified and made more consistent with Australian requirements, removing the "all practicable steps" standard from particular requirements wherever possible. The new regulations will also require mine operators to put in place formal health and safety management systems. Key elements of a health and safety management system will be the preparation of principal hazard management plans and principal control plans.

8 Although overall responsibility for developing and maintaining a health and safety management system will sit with the mine operator, we propose creating the new role of site senior executive (discussed later in this chapter) to oversee the system and to provide a point of contact for mine workers and the regulator.

9 The elements of the new regulatory approach are described in more detail below, and are also set out in the following diagram.

5. The Health and Safety in Employment (Mining Administration) Regulations 1996 – which set competency requirements.
The Health and Safety in Employment (Mining Underground) Regulations 1999 – which deal with hazards in underground coal mines.

PROPOSED PROCESSES FOR MINE OPERATORS TO MANAGE HEALTH AND SAFETY IN NEW ZEALAND



THE FOCUS IS ON PRINCIPAL HAZARDS

10 The regulations will focus on managing "principal hazards". Principal hazards can include, but are not limited to, the following:

- Ground or strata control
- Inundation or inrush
- Mine shafts and winding operations
- Roads, other vehicle operating areas and traffic management
- Air quality, airborne dust and other contaminants
- Fire and explosion
- Explosives
- Gas outbursts
- Spontaneous combustion, and
- Tips, lagoons, dams and voids.

11 In determining what hazards should be considered principal hazards we propose to use the definition from the Australian mining regulations. A "principal hazard" is something that could create a risk of multiple fatalities in a single incident or fatalities in a series of recurring incidents[6]. We propose to substantially follow the schedule of listed principal hazards from the Australian legislation, with some additions, omissions and adaptations for the New Zealand context. This approach will, for example, allow us to strengthen requirements for hydro mining, which is practiced in New Zealand but not in Australia. We can do this by adding requirements for the principal hazard management plans for strata/ground control, gas outbursts, and fire and explosion, as well as for electrical, mechanical and ventilation control plans.

12 For each principal hazard, the regulations will:

- Specify the processes for managing that hazard, and
- Set out strengthened minimum standards.

13 Mine operators will be required to prepare principal hazard management plans and principal control plans to show how they comply with these requirements.

14 The new process requirements of the new mining regulations will not apply to less hazardous activities (i.e. those that do not meet the definition of principal hazard, such as noise, or manual handling hazards). However, mine operators will still have to meet their existing obligations to manage these hazards under the HSE Act, the Hazardous Substances and New Organisms Act 1996, and regulations under these Acts.

PRINCIPAL HAZARD MANAGEMENT PLANS (PHMPS)

A PHMP for each principal hazard

15 The regulations will require that a mine operator prepares a PHMP for each "principal hazard" that exists in a mine, regardless of the level of risk. If a hazard is not present in a particular mine (for example, spontaneous combustion is not a hazard in a metalliferous mine), a PHMP is not required for that hazard.

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6. Definition of principal hazard from the draft Australian harmonised mining regulations:
Any activity, process, procedure, plant structure, substance, situation or other circumstance relating to the conduct of mining operations that could create a risk of multiple fatalities in a single incident or fatalities in a series of recurring incidents, in relation to the following:

- Ground or strata stability
- Inundation and inrush of any substance
- Mine shafts and winding operations
- Roads and other vehicle operating areas
- Air quality and dust and other airborne contaminants
- Fire or explosion
- Gas outbursts
- Ionising radiation

16 The principal hazards that we list above are examples. There may be other principal hazards present at a mine, and PHMPs will be needed for these hazards. For example, the use of large quantities of hazardous substances in gold mining may require operators to develop PHMPs for dealing with these substances.

Contents of PHMPs will be specified

17 The regulations will specify the general matters that need to be addressed in all PHMPs. These include:

- Stating the nature of the principal hazard dealt with in the plan
- Describing how a risk assessment will be conducted in relation to each principal hazard (we talk more about risk assessment below)
- Specifying the measures that will be taken to control risks to health and safety associated with the hazard (we refer to these as control measures) in accordance with the HSE Act. These are: to take all practicable steps to eliminate, isolate, and only then to minimise the hazard
- Developing the standard operating procedures and response plans required to implement control measures on a daily basis
- Identifying roles, skill levels, and responsibilities of everyone involved in implementing the control measures, and
- Emergency preparedness in relation to the hazard.

18 In addition to these general requirements, the PHMP will need to address the hazard-specific matters that are identified in the regulations. We set out proposals for the required processes for managing key principal hazards in technical appendix two (in volume two). This also includes our proposals for strengthened minimum standards.

19 All PHMPs will need to be set out and expressed in a way that is readily accessible to everyone who will use them. The plans will need to be internally reviewed on a regular basis, and independently audited at least once every three years.

Risk management will be spelt out

20 As noted above, PHMPs will involve risk assessments. We propose that the regulations set out a process for risk management, based on the process followed in the Australian mining states. This process will involve:

- Identifying all reasonably foreseeable hazards
- Developing an appropriate method of risk assessment for each hazard
- Assessing the risks arising from each hazard, and
- Taking all practicable steps to eliminate, isolate and only then to minimise a hazard (in accordance with the existing hierarchy of controls in sections 7-10 of the HSE Act).

21 The regulations would also stipulate when risk assessments should be carried out. This includes: at the design stage of a mining operation; prior to the commencement of operations; at specified intervals during operations; when there is evidence that an existing assessment is no longer valid; and whenever there is a material change in the size of a mining operation or in its practices, processes or procedures.

22 Chapter three, on training and qualifications, includes proposals for risk management training for site senior executives, mine managers and others with safety critical roles.

PHMPs must go to the regulator

23 PHMPs will need to be submitted to the regulator at least three months before any new mining operations begin. For existing mines, PHMPs should be developed and made available to the regulator within 12 months of the new regulations coming into force.

24 The intention is to increase regulator involvement in the early stages of design and development of mining operations, and in the implementation of effective health and safety systems. We do not propose that the regulator will formally "approve" the plans when they are drafted. However, the plans will provide evidence of compliance with the HSE Act and the regulations. If the regulator considers a plan to be inadequate it could issue an improvement or prohibition notice. The responsibility for developing the plans and ensuring that workers can work safely is the mine operator's.

Site senior executive responsibility for PHMPs

25 We propose that the person holding the new role of site senior executive (which we discuss below in the section on new safety critical roles) will be required to maintain, oversee, regularly review, and seek an independent audit of all PHMPs, aswell as providing copies to the regulator. The site senior executive must also make the plans available to mine workers and others in the mine. Workers must be given the opportunity to participate in the development of the plans.

Codes of practice will provide guidance

26 Approved codes of practice will be developed for all principal hazards identified in the regulations, to help mine operators develop their PHMPs.

27 An approved code of practice is a statement of preferred work practice, and is the recommended means of compliance with legal requirements. The codes are "approved" by the Minister of Labour, after consultation with those who are affected. An approved code does not necessarily contain the only acceptable way of achieving the legal requirements. However, in most cases, compliance with the code will meet those standards, and observance of a code may be considered evidence of good practice in a court.

28 As noted previously, a key question in developing the new regulatory framework for mining is to decide what level of detail is specified in the regulations and what is dealt with in codes of practice. Our general approach is that the regulations will set out the processes and standards that must be adhered to, while the codes will provide guidance on the different ways those requirements can be met. If there is only one way to comply with a requirement, then this will be specified in the regulations.

29 For example, the regulations will say that underground mines and tunnels must have adequate roof and rib support to avoid falls of ground. A code of practice will set out the detailed requirements for measuring and assessing the degree of support that is needed and the means of putting this into place.

30 The codes will also set out requirements for developing standard operating procedures (SOPs) and trigger action response plans (TARPs) to underpin the PHMP. SOPS and TARPs will tell workers what to do in managing certain hazards. We understand that SOPS and TARPs are commonly used in the mining industry.

31 This document does not include proposals for the content of approved codes of practice. A number of working groups, with worker and industry participation, have been established to assist the Ministry in developing the codes. Technical appendix five (in volume two) provides information on the approved codes of practice for PHMPs and the timetable for preparing these over the next two and a half years.

32 You will see in the timetable that not all codes will have been developed by the time the new regulations come into force in December this year. Where this is the case, mine operators will be able to work with the regulator on a case-by-case basis to establish how the relevant hazards can be best controlled in their operations.

PRINCIPAL CONTROL PLANS (PCPS)

33 Control measures such as ventilation, electrical or mechanical engineering systems and infrastructure can used to address various hazards. Where these control measures are best

addressed as a system, they can be grouped together in what is called a principal control plan or PCP. For example, many of the control measures addressing the principal hazards of fire and explosion and air quality are best addressed together in a ventilation control plan. The PHMP for air quality and the PHMP for fire and explosion could then refer to the ventilation control plan.

When PCPs are required

34 The regulations will set requirements for the following types of PCPs:

- Mechanical engineering
- Electrical engineering
- Ventilation
- Worker health
- Emergency response (emergency management plans, or EMPs, are discussed further in chapter five), and
- Mine survey.

35 There is the potential to require additional PCPs, such as for isolation procedures or geotechnical design. We seek industry views on this.

36 PCPs will only be needed where a mining operation is required to have PHMPs. The type of PCPs required for a particular mining operation will depend on the hazards that are present. For example, a ventilation control plan, an electrical control plan and an emergency response plan would be needed if there were fire, explosion and air quality hazards in an underground mine. A large quarry, on the other hand, may only need to develop mechanical control plan and an emergency response plan.

Contents of PCPs will be specified

37 The regulations will specify the general matters that need to be addressed in PCPs. Each PCP will:

- Set out how risks will be managed for each principal hazard (through the application of controls)
- Identify roles, skill levels and responsibilities of everyone involved in the implementation of the PCP
- Include emergency preparedness, where appropriate
- Be accessible to, and easily understood by, the people who need to use it, and
- Be internally reviewed regularly and independently audited at least once every three years.

38 The regulations will also set out the specific requirements for each type of PCP (e.g. all the matters that need to be covered in a ventilation PCP). This will include the processes specified in the regulations, and the relevant minimum standards (outcome requirements). We set out our proposals for specified processes and minimum standards for each type of PCP in technical appendix three (in volume two).

PCPs must go to the regulator

39 As for PHMPs, PCPs will need to be submitted to the regulator at least three months before any new mining operations begin. For existing mining operations, PCPs should be developed and made available to the regulator within 12 months of the new regulations coming into force.

40 The intention is to increase regulator involvement in the early stages of design and development of mining operations, and in the implementation of effective health and safety systems. We do not propose that the regulator will formally “approve” the plans when they are drafted. However, the plans will provide evidence of compliance with the HSE Act and the regulations. If the regulator considers a plan to be inadequate it could issue an improvement or prohibition notice. The responsibility for developing the plans and ensuring that workers can work safely is the mine operator’s.

Site senior executive responsibilities for PCPs

41 As for PHMPs, we propose that the site senior executive is required to maintain, oversee, regularly review, and seek an independent audit of the PCPs, as well as providing copies to the regulator. The site senior executive must make the plans available to mine workers and others in the mine. Workers must also be given the opportunity to participate in developing these plans.

Codes of practice will provide guidance

42 An approved code of practice will be developed for each type of PCP, to help mine operators develop their plans.

43 The codes will also set out requirements for developing standard operating procedures (SOPs) and trigger action response plans (TARPs) to underpin the PCP. SOPs and TARPs will tell workers what to do in managing certain hazards.

44 The role of codes of practice and the timetable for the developing these is explained in the section on PHMPs above.

ENFORCEMENT OF THE NEW MINING REGIME

45 Enforcement of the new mining regime will be undertaken by the new workplace health and safety regulator, in accordance with the HSE Act. We propose that mines inspectors will have new functions and powers to:

- Direct a mining operator to address hazard management issues and implement an effective health and safety management system
- Issue improvement or prohibition notices if a PHMP or PCP is inadequate, and
- Issue improvement or prohibition notices where a mines inspector believes that the risk of continuing mining operations is not at an acceptable level.

46 We also propose that:

- Notices and directives issued by a mines inspector can be reviewed by the District Court, and
- Mining operators must notify the regulator of high potential incidents, and maintain evidence at the site until authorised by the regulator to do otherwise.

TRANSITIONAL ARRANGEMENTS

47 It is proposed that the new regulatory framework for mining, including the new hazard management process requirements, strengthened minimum standards and the obligation to prepare PHMPs and PCPs, will come into effect in December 2013. However, there will be transitional arrangements to allow duty holders time to comply with the new requirements. We propose that:

- Duty holders who commence new mining operations after the new regulatory framework is promulgated will be subject to all regulatory provisions from the date the regulations come into effect
- Existing mining operators will have 12 months from the date the regulations come into effect to meet any new requirements, and
- The Chief Inspector of Mines may grant an exemption of up to 36 months from the date the regulations come into effect, for reasons stipulated in the regulations, subject to the operator implementing suitable risk mitigation measures.

Q: A new regulatory approach, with stronger hazard and risk management

What do you think?

- Do you support the proposals to require principal hazard management plans and principal control plans?
- Are the requirements for the preparation of principal hazard management plans and principal control plans clear enough to enable mine operators to prepare these plans? What changes would you suggest?
- Have we focused on the right hazards? What changes would you make to the list of principal hazards?
- Have we focused on the right controls to be subject to principal control plans?
- Do you agree with the proposed strengthened minimum standards (set out in technical appendices two and three)? What changes would you suggest?
- Do you agree with the proposed processes for managing principal hazards (set out in technical appendices two and three)? What changes would you suggest?
- Do you agree with new enforcement powers for mines inspectors?
- Do you agree with the proposed transitional arrangements? Are there any transition issues that we have missed?
- In making your submission you may wish to comment on the technical appendices for this chapter.

Safety critical roles for mining operations

The Royal Commission recommends:

Mandating the statutory positions necessary to ensure healthy and safe mining (including a statutory mine manager and ventilation officer), and identifying their key functions and the relevant qualifications, competencies and training.

Key issues

48 While the existing regulations stipulate a number of safety critical roles that must be filled at a mine, they do not set out the safety critical duties for each role in any detail, nor do they provide role specific accountabilities. This makes it difficult to know who is responsible for what in the health and safety area (including the development and maintenance of workplace health and safety management systems, and day to day line management responsibilities). It can also lead to inconsistencies in the performance of safety critical roles between mines, and between New Zealand and Australia.

What we propose

NEW SAFETY CRITICAL ROLES

49 We propose that the new mining regulations will require mining operators to appoint people to a number of new and expanded safety critical roles. Some of these will be required for all mining operations, while others will only be required for certain types of operation. While the persons appointed to these roles will have day to day health and safety responsibilities, the mine operator as the primary duty holder will have overall responsibility for ensuring health and safety.

50 The new and expanded roles that we propose are:

- For all mines: a site senior executive, electrical engineering manager, mechanical engineering manager and mine surveyor[7]
- For all underground mines: a ventilation officer
- For underground coal mines: an underviewer[8] on all production shifts, and
- For opencast mines (coal or metalliferous), underground metalliferous mines, and quarries and tunnels within the scope of the new regulations (see chapter one): a supervisor on all production shifts.

51 These roles may be filled by employees of the mine operator or by contractors.

52 We do not comment on the role of manager of various mining operations here, as we do not propose changes to this role. The manager's role would of course continue to be one of the key safety critical roles at a mining operation.

7. Mine surveyor is an existing statutory position. The regulations will be more precise about the role of the mine surveyor and when one is needed.
8. Coal mine underviewer is an existing statutory position. The proposed change is to require an underviewer to be present on all shifts.

NEW AND REVISED SAFETY CRITICAL ROLES REQUIRED FOR DIFFERENT MINING OPERATIONS[9]					
Roles	**Underground mines**		**Opencast mines**		**Quarries and tunnels***
	Coal	**Metalliferous**	**Coal**	**Metalliferous**	
Site senior executive (new)	Required for all				
Electrical engineering manager (new)	Required for all				
Mechanical engineering manager (new)	Required for all				
Mine surveyor (revised)	Required for all				
Ventilation officer (new)	Required for underground mines				
Underviewer on all production shifts (revised)	Required for underground coal mines				
Supervisor on all production shifts (new)		Required for all *except* underground coal mines			
*Quarries and tunnels within the scope of the new regime (see chapter one)					

ROLES AND FUNCTIONS OF THESE POSITIONS WILL BE SET OUT IN THE REGULATIONS

53 The role and functions of each new (and existing) safety critical position at a mine will be set out in the regulations. We summarise some of the new roles and functions below.

54 Chapter three on training and qualifications addresses the Royal Commission's recommendations concerning qualifications, training and competencies for the safety critical roles.

ROLE AND FUNCTIONS OF THE SITE SENIOR EXECUTIVE

55 A mine operator will be required to appoint a site senior executive (SSE) for every mining operation. It may be possible for a mine operator to appoint a person to be SSE for more than one mine, as long as the operations are geographically adjacent.

56 The SSE will be the most senior representative of the mine operator at or near a mining operation, and the point of contact with the regulator. The SSE role will be broadly consistent with that in Queensland, and will include the following functions:

- Ensuring the development and maintenance of workplace health and safety management systems, including PHMPs and PCPs (including emergency response plans)
- Meeting mine reporting and notification requirements to the regulator's mining inspectorate
- Ensuring workers are consulted on workplace health and safety in an appropriate and on-going manner

9. Note: the role of mine manager is not included in this table as it is not a new or revised safety critical role.

- Ensuring trained and competent personnel are in place at the mine and that the training and competency requirements set out in the regulations are met
- Maintaining a management structure that supports health and safety, including documenting the responsibilities and competencies of senior positions
- Providing for adequate planning, organising, leadership and control of a mining operation, and
- Providing for the supervision of shift operations, monitoring the work environment, procedures, equipment and installation, and inspection of each workplace at the mine.

Relationship between the site senior executive and the mine manager

57 Existing mine manager roles will be maintained. In some circumstances (discussed below) it will be possible for a person to be appointed as both the SSE and the mine manager for a particular mining operation.

58 The SSE would be responsible for the development and maintenance of health and safety systems and processes, while the mine manager would be responsible for the on-going implementation and operation of those systems. This would be similar to the relationship between a mine manager and the mine operator's chief financial officer (CFO), where the CFO develops the financial policies and mine managers are responsible for implementing them on a daily basis.

59 In practice it is likely that the mine manager would report to the SSE, concerning the maintenance of health and safety systems at least. The SSE will, in addition to holding the new certificate of competence for a SSE, be required to hold the relevant manager certificate of competence for the operation. This will ensure that SSE is qualified to provide direction to a mine manager.

ROLE AND FUNCTIONS OF THE SUPERVISOR

60 All opencast coal mines, metalliferous mines (opencast or underground), and quarries and tunnels that are within scope will require a supervisor. The role and functions of a supervisor will be similar to those of a coal mine underviewer (an existing position). A supervisor will need to be present on any production shift.

61 The supervisor will be responsible for:

- Inspecting working places
- Monitoring work practices to ensure: compliance with regulations; the application of the health and safety management system and operating procedures of the mine, tunnel or quarry; and the safety of all mine workers, and
- Resolving non-routine safety matters.

ROLE AND FUNCTIONS OF THE VENTILATION OFFICER

62 All underground mines will require a ventilation officer. A person appointed as a ventilation officer may hold another role at the mine provided the additional functions do not prevent the person from carrying out the functions of the ventilation officer.

63 A ventilation officer has the following functions:

- Monitoring the implementation of the ventilation control plan
- Ensuring adequate ventilation of the mine
- Ensuring the quality of the air in the mine is measured and recorded
- Designing the ventilation system for the mine
- Taking charge of any changes to the mine ventilation system, and
- Ensuring all ventilation control devices are properly constructed and maintained.

ROLE AND FUNCTIONS OF THE ELECTRICAL ENGINEERING MANAGER

64 All mining operations will require an electrical engineering manager. A person appointed as an electrical engineering manager may hold another appointment at the mine provided the additional functions do not prevent the person from carrying out the functions of an electrical engineering manager.

65 An electrical engineering manager has the following functions:

- Monitoring the implementation of the electrical engineering control plan
- Supervising the analysis, design and maintenance of electrical systems, including power systems, electronics, control systems, signals and telecommunications, and
- Advising the SSE of health and safety standards for electrical engineering.

ROLE AND FUNCTIONS OF THE MECHANICAL ENGINEERING MANAGER

66 All mining operations will require a mechanical engineering manager. A person appointed as a mechanical engineering manager may hold another appointment at the mine provided that the person's additional functions do not prevent the person from carrying out the functions of a mechanical engineering manager. The mechanical engineering manager has the following functions:

- Monitoring the implementation of the mechanical engineering control plan
- Supervising the analysis, design and maintenance of mechanical systems
- Selection and operation of mechanically powered machinery for production purposes, and
- Advising the SSE of health and safety standards for mechanical engineering.

WHEN A PERSON CAN HOLD MORE THAN ONE SAFETY CRITICAL ROLE

67 It may be possible for a person to be appointed to more than one statutory position if that person holds the required competencies for all roles, and if the functions of all roles could be carried out effectively. For example, a mine manager could also be the SSE and ventilation officer.

BETTER PRESCRIPTION OF EXISTING SAFETY CRITICAL ROLES

68 As well as establishing new safety critical roles, we propose that the roles and functions of the existing safety critical positions, such as mine manager, are more clearly assigned and described in the regulations.

Q: Safety critical roles for mining operations

What do you think?

- Do you agree with the proposed functions and duties of the new and expanded safety critical roles? Why, why not? What would you change?
- Is the role of an SSE relative to that of mine manager clear and, if not, how could we clarify this?
- Should a SSE be able to be responsible for more than one mine site?
- Do you agree with the proposal that, in certain circumstances, a person can hold more than one safety critical role? In particular, do you think it is appropriate that a mine manager also hold the role of SSE?

Establishing a mining sector advisory group

The Expert Reference Group, which has been assisting the Ministry with the development of the proposals for the new regulatory framework for mining, has recommended establishing a mining sector advisory group. This is not a proposal of the Royal Commission.

Key issues

69 While the Royal Commission did not recommend the establishment of a mining sector advisory group, such stakeholder participation in the regulatory system is international best practice for improving health and safety outcomes. Active stakeholder engagement is widely accepted as being a cornerstone for achieving a better health and safety culture at both an industry and firm level.

What we propose

70 We propose that the new workplace health and safety regulator establishes a mining sector advisory group. The function of the group will be to provide strategic advice and feedback on the effectiveness of the new regulatory framework (including primary legislation, regulations, codes of practice and other guidance, and competency requirements), and on the effectiveness of the regulator in administering and enforcing the new framework. The advisory group would not have a role in issues related to a particular mining operation or operator.

71 To add value to its advisory function, this group will also have a role in monitoring health and safety trends in mining, both in New Zealand and overseas.

72 The advisory group will be fairly small, and will include representatives from different types of mining operations, as well as worker health and safety representatives (union and non-union). The group will be chaired by a senior manager of the health and safety regulator.

Q: Establishing a mining sector advisory group

What do you think?

- Do you support the establishment of a mining sector advisory group?
- Do you agree with the proposed functions of the group? What changes do you suggest?
- Do you agree with the proposed membership of the group? What changes do you suggest?

CHAPTER THREE

03 Training and qualifications

What we propose:

Competency requirements for all safety critical roles are set out in the mining regulations	The required competencies for the safety critical roles at mining operations will be clearly specified in the regulations, rather than the current approach which leaves it to an employer to appoint a "competent person". Competencies (including unit standards) will be aligned with Australia. Appointees to the new safety critical roles will be required to meet the new competency requirements upon appointment. For other roles there will be a transition period of three years to enable compliance with new competency requirements.
There are minimum training requirements for mine workers	Workers will need to be directly supervised until they meet minimum training requirements. The minimum requirement will be a new New Zealand Certificate in Mining (Induction).
An independent board sets the standards and examines mine workers' competency	The workplace health and safety regulator will establish a New Zealand Mining Board of Examiners to: › Provide advice on competency requirements › Assess applicants for certificates of competency › Grant, renew and revoke certificates as appropriate, and › Set requirements for continued professional development. The board will work closely with its Australian counterparts, and will be tasked with progressing a joint New Zealand/Australia accreditation framework.
Mine managers to have formal training in risk management and health and safety	Risk management will be added to the competencies for mine managers, the new role of site senior executive and other safety critical roles. There will be guidance for mining sector managers on how to create a workplace culture that delivers good health and safety outcomes.

These proposals address the Royal Commission's concerns about mine managers being appropriately trained in health and safety, strengthening the competencies for safety critical roles and aligning these with Australia, and the regulator having a greater role in the supervision and granting of mining qualifications (recommendations 8, 9, 10 and 12). Chapter two considers the role and functions of the persons appointed to the new safety critical roles.

Raising standards for health and safety consultants is not dealt with here. The Government has referred this matter to the Independent Taskforce on Workplace Health and Safety.

The qualifications and competencies of the workforce are central to managing hazards. A suitably trained workforce is one of the first lines of defence against a major accident[10].

We propose:

- Competencies for existing and new safety critical roles at mining operations
- A greater role for the regulator in setting and assessing competencies, and
- Health and safety responsibilities and training for mine managers.

10. The Royal Commission quoting SafeWise Solutions Pty Ltd, Incident Investigation Reference Guide, Issue 4, October 2010, section 7, p.5.

Competencies for existing and new safety critical roles at mining operations

The Royal Commission recommends:

Functions, duties and required competencies of safety critical roles at mine sites are clearly set out in the regulations[11]

Strengthening standards so that they are comparable with those of Australia.[12]

Key issues

1 As noted by the Royal Commission, the competencies of mine workers are central to managing hazards, and a suitably trained workforce is one of the first lines of defence against a major accident[13]. By improving the competency of the mine workers and managers, we aim to improve the safety culture of the mining workforce and the safety of mining operations generally.

2 Closer alignment with Australia was a key theme for the Royal Commission. In aligning the competency framework with Australia (and Queensland in particular) we will:

- Align New Zealand with international best practice, and
- Allow easy movement of qualified staff between Australia and New Zealand and make assessment and recruitment more straightforward.

What we propose

3 We suggest implementing these recommendations by:

- Clearly setting out competencies in the mining regulations, including competencies for the new safety critical roles, and revised competencies for some existing roles
- Aligning the competency framework with Australia, and
- Introducing minimum training requirements for mine workers.

COMPETENCIES SET OUT IN THE REGULATIONS

Competencies in the regulations

4 The new mining regulations will set out the competencies for each safety critical role at a mining operation. This will be a change from the current approach, where the existing regulations stipulate the safety critical roles that must be filled at a mining operation, but leave it to the employer to appoint a "competent person". While the existing regulations require employers to ensure that every employee holds a current certificate of competence for their position, they do not state the safety critical duties for each role in any detail or provide role specific accountabilities. The new approach would be similar to that used in the Queensland regulations.

5 The regulations, in addition to specifying the competencies, will describe the functions and duties for each safety critical role (see chapter two for further details).

Competencies for some existing roles will change and competencies for the new roles will be established

6 The regulations will change the competency requirements for some roles, and will also include competencies for the new safety critical roles (site senior executive, ventilation officer, electrical

11. Recommendation 2 (bullet point 5, sub bullet point 4), and recommendation 12 (bullet point 3).
12. Recommendation 12 (bullet point 1).
13. Report of the Royal Commission on the Pike River Coal Mine Tragedy, Volume 2, page 338.

engineering manager, mechanical engineering manager, and supervisor). Some competencies will vary depending on the type of mining operation. For example, not all requirements for underground mines would apply to opencast mines, and there would also be differences between the requirements for coal and metalliferous mines.

7 We summarise the proposed competencies for some of the key safety critical roles below. More detail is provided in technical appendix seven (located in volume two), which compares the current approach with what is proposed. Your feedback on the proposed competencies will inform the competencies that are included in the new mining regulations. We will consult further with the mining industry in August/September on the draft regulations.

Competencies for the new role of site senior executive

8 There will be a certificate of competence for the new role of site senior executive (SSE) which will include competencies in risk management, occupational health and safety, and mining legislation. The new SSE competencies would be aligned with the Queensland requirements for a SSE and would also include elements from the United Kingdom code of practice on health and safety in high hazard industries.

9 The SSE will also be required to hold the mine manager certificate of competence for the mining operation concerned.

10 The role and functions of the SSE are set out in chapter two, page 29, as part of the discussion of new safety critical roles. In that chapter we also discuss the situations where the SSE can also hold other safety critical roles in a mining operation. The key requirement is that the person holds all the certificates of competency that are required for the roles.

Competencies for the new role of ventilation officer

11 There will be a certificate of competence for the new role of underground ventilation officer. This is likely to require a certificate in mine ventilation and qualifications in risk management. These requirements would be aligned with the Queensland requirements for a ventilation officer.

Competencies for the new role of electrical engineering manager

12 There will be a certificate of competence for the new role of electrical engineering manager. A person holding this position would need to hold a national diploma in extractive industries (mining electrical engineering hazardous areas). The required competencies would also include risk management, and occupational health and safety management. These requirements would be aligned with the Queensland requirements for an electrical engineer.

Competencies for the new role of mechanical engineering manager

13 There will be a certificate of competence for the new role of mechanical engineering manager. A person holding this position would need to hold a national diploma in extractive industries (mining mechanical). The required competencies would also include risk management, and occupational health and safety management. These competencies would be aligned with the Queensland requirements for a mechanical engineering manager.

Competencies for the new supervisor roles

14 Two new certificates of competence will be established for the new role of supervisor. One will be for surface mining operations (including opencast coal mines, surface metalliferous mines and quarries). The other will be for underground mining operations (including tunnels and underground metalliferous mines). Supervision in underground coal mines will be covered by the existing underviewer position.

15 The surface supervisor certificate of competence will be closely aligned to the Queensland opencut examiner certificate of competence.

16 The underground supervisor certificate of competence will align with the B-grade certificate of competence as a tunnel manager.

Additional or revised competencies for existing roles

17 Risk assessment or management will be added to the competencies for all existing safety critical roles.

18 A number of roles will now require competencies in the following areas:

- Occupational health and safety management systems (for an underground coal mine manager, opencast coal mine manager, quarry manager, metalliferous mine manager, and tunnel manager)
- Emergency management systems (for all mine managers and senior site executives)
- Conducting health and safety investigations (for a manager of a small underground coal mine), and
- Use of explosives (for managers of small opencast mines, quarries and tunnels).

19 The certificate of competence for an underviewer in an underground coal mine will be aligned with the Australian undermanager certificate. Sufficient underviewers will need to be appointed at all underground coal mines to ensure an underviewer is present on all production shifts. The underviewer will be responsible for ensuring the safety of all persons engaged in the mining operation on a shift.

"Human factors" in competencies for new and existing roles

20 We are considering whether "human factors" or similar requirements should be included in the competency requirements for both new and existing safety critical and general management/ supervisory roles in mining operations. This would strengthen understanding of how behaviours and actions influence safety practices. However, the inclusion of human factors in competency requirements would be inconsistent with practice in other mining countries, and could compromise the alignment of New Zealand qualifications with Australia.

The place of continuous professional development in the granting of certificates of competency

21 Continuous professional development (CPD) will be a requirement of the granting of certificates of competence for all positions. The exact nature and extent of CPD required for each role will be determined by the proposed board of examiners (see below).

The term of certificates of competency

22 We propose that all certificates of competency will have a term of three years, at the end of which they will need to be renewed. For a certificate to be renewed, the applicant will need to show they meet both competency and CPD requirements. As noted in paragraph 33, the proposed board of examiners will have a role in the renewal process.

ALIGNING THE COMPETENCY FRAMEWORK WITH AUSTRALIA

23 In order to firm up our proposals to include new and strengthened competencies in the new mining regulations, we are working with MITO[14] to review the existing certificates of competency (and the component unit standards) for the managers of mining operations and other safety critical roles in the industry. In undertaking this review we will also work with SkillsDMC[15] to compare the unit standards in New Zealand and Australia, and propose any changes required to align the comparable qualifications.

24 The Australian standards will be adopted as appropriate. The aim is to ensure that the requirements for certificates of competency are equivalent. If New Zealand standards are higher than in Australia we would not propose to reduce them, but rather encourage Australia to incorporate the New Zealand standard.

MINIMUM TRAINING FOR MINE WORKERS

25 We propose that the new regulations will specify minimum training requirements for new or untrained mine workers. Workers will need to be directly supervised until they complete this training.

26 A new New Zealand Certificate in Mining (Induction) will be established, and will be the minimum qualification for mine workers. The existing New Zealand Certificate in Mining (Operations) and

14. MITO, the NZ Motor Industry Training Organisation Inc, has consolidated the business activities of the Extractive Industry Training Organisation (EXITO) and is now the recognised organisation that manages the part of the New Zealand Qualifications Framework that applies to the mining industry, and will issue New Zealand certificates of competency.

15. SkillsDMC is a nationally recognised advisory body on the skills and workforce development needs of Australia's resources and infrastructure industry.

the New Zealand Certificate in Mining (Introduction) exceed the requirements of the new certificate and would therefore meet the minimum training requirements.

27 A process will be developed to assess existing workers to ensure that they have the minimum competencies to work unsupervised. It is proposed that the assessment would be able to be carried out by a mine operator or by an independent assessor.

TRANSITIONAL ARRANGEMENTS

28 It will take some time to establish and approve the new qualifications and unit standards and make these available. We propose the following transitional arrangements:

- Statutory duty holders with existing time limited certificates of competence may continue to undertake their roles for the remainder of the term of the certificate
- Holders of life-time certificates will be required to gain new, time-limited certificates of competency within three years, and
- People appointed to the new statutory safety critical roles, such as senior site executive, will be required to have the required competencies from the date of appointment.

COSTS ASSOCIATED WITH THE NEW COMPETENCY REQUIREMENTS

29 The costs of developing the new unit standards will be met by MITO. The costs of the additional training and assessment associated with the enhanced qualification requirements will be met by industry.

QUALIFICATIONS OF MINES INSPECTORS

30 The required qualifications for regulator appointed mines inspectors are being considered as part of the change programme for the Ministry's Health and Safety Group.

Q: Competencies for safety critical roles in the mining industry

What do you think?

- Do you agree with the proposed competencies for safety-critical roles in the mining industry? If not, why not? What changes do you suggest?
- What level of qualification should a SSE have and should this differ depending on the type of mining operation?
- Should we introduce "human factors" into the competency requirements for safety critical and general management/supervisory roles in mining operations? If so, for which roles should this requirement be introduced?
- What should be the minimum training or competency requirement for new mine workers?
- How do you think the competence of existing workers should be assessed to ensure that they meet the new minimum requirements? What transitional arrangements should apply?
- We currently have separate certificates of competency for underground and opencast mines, tunnels and quarries, although some of these have the same or similar unit standards. Do you favour consolidating the certificates of competency where practicable?
- Are the transitional phase-in provisions for the new competencies reasonable? Are there any transitional issues that we have missed?
- In making a submission on this chapter we also welcome your feedback on the more detailed proposals in technical appendix seven.

A greater role for the regulator in setting and assessing competencies

The Royal Commission recommends:

- Regulator oversight of workforce competency[16].
- Developing a joint accreditation process with Australia and an Australia/New Zealand board of examiners[17].

Key issues

31 The Royal Commission found that, overall, the existing competency framework for the mining industry is reasonably extensive and has a strong focus on health and safety. It also acknowledged the benefits in having the mining industry lead the development and assessment of competencies, but found there was not sufficient quality assurance or government oversight.

What we propose

THE REGULATOR ESTABLISHES AN INDEPENDENT BOARD OF EXAMINERS

32 We propose that the regulator establishes a New Zealand Mining Board of Examiners to add rigour and independence to the assessment process. This is partly a return to the approach before the enactment of the HSE Act in 1992. Until then, the Coal Mines Act 1979 and the Mining Act 1971 provided for a board of examiners to determine the curriculum, set standards for certificates of competence, carry out examinations and grant certificates.

FUNCTIONS OF THE BOARD OF EXAMINERS

33 The functions of the board of examiners will be to:

- *Provide advice to the health and safety regulator on the certificates of competency that should be specified in the regulations.* The regulator would provide recommendations to the Government on the competencies to be specified in the regulations.
- *Provide advice on the specific competencies (unit standards) that make up certificates of competency.* The unit standard requirements would be set out in a Gazette notice. The board would carry out this function with the assistance of MITO[18], the industry training organisation currently responsible for determining the content of the extractive industries' unit standards within the NZQA framework and for ensuring quality control of the accredited organisations carrying out training and assessments.
- *Assess applicants for certificates of competency.* The board would decide on an appropriate method of examination for the various certificates of competence. This is likely to be a mix of written and oral examination, by panels of examiners that are specialist in particular parts

16. Report of the Royal Commission, page 339, paragraph 16
17. Recommendation 12 (bullet point 2)
18. The New Zealand Motor Industry Training Organisation (MITO) has consolidated the business activities of the Extractive Industry Training Organisation (EXITO).

of the industry (e.g. underground coal mines, underground metalliferous mines, tunnels, opencast mines and quarries). Examinations for each certificate of competence are likely to take place annually, although there would be flexibility for examination panels to meet more often. MITO would continue to be responsible for training and assessing unit standards, and would determine if an applicant is ready to sit the board of examiners' examination.

- *Grant certificates of competence.* Certificates would be granted to persons who have demonstrated the appropriate competencies to the board.
- *Determine if there has been sufficient continued professional development and maintenance of competence* to justify the renewal of a certificate of competence.
- *Assess foreign-trained mine workers* and holders of foreign qualifications and certificates of competence before granting New Zealand certificates of competence.

THE MINISTRY AND MITO WILL CARRY OUT THE INITIAL WORK

34 While it will be the board's ongoing responsibility to provide advice on the competencies required for a certificate of competency, the Ministry and MITO will carry out the initial work on aligning the competencies with Australia and advising the Government on the competencies for safety critical roles to be set out in the new mining regulations. This is because the board will not be set up in time: it is likely that the earliest it could be established and operating is January 2014.

THE BOARD WILL WORK WITH AUSTRALIAN COUNTERPARTS

35 The board of examiners would establish and maintain an association with similar boards of examiners in Australia. These links would be important to ensure that New Zealand competencies continue to be aligned to their equivalents in Australia. The aim would be to establish a joint New Zealand/Australia accreditation process in the near future, and the board would be tasked with progressing this.

MEMBERSHIP OF THE BOARD OF EXAMINERS

36 We propose that membership of the New Zealand Mining Board of Examiners includes the following:

- The Chief Inspector of Mines (chairperson)
- A person engaged in the coal mining industry who holds a first class coal mine manager's certificate of competence
- A person engaged in the mining industry who holds a first class mine manager's certificate of competence or an A-grade tunnel manager's certificate of competence
- A person engaged in the mining industry who holds an A-grade opencast coal mine manager's certificate of competence or an A-grade quarry manager's certificate of competence
- A regulator appointed inspector who holds either a first class coal mine manager's certificate of competence, or a first class mine manager's certificate of competence, or an A-grade quarry manager's certificate of competence, or an A-grade opencast coal mine manager's certificate of competence
- Up to two persons who teach mining related qualifications at a tertiary education organisation, and
- The Chief Executive of MITO.

37 Appointments to the board and to the examination panels would be part time. Due to the small size of the New Zealand mining industry it may be necessary to enable members to be drawn from the Australian industry, mining consultants and contractors, and persons who have retired from the mining industry, as well as those currently employed by New Zealand mine operators.

FUNDING THE BOARD

38 We anticipate that the cost of running the board of examiners would be approximately $250 000 per year. While applicants would pay a fee for examinations, this would not be enough to cover its operating costs.

39 We propose that the establishment costs will be met by the regulator, but the on-going operating costs would need to be paid by the mining industry. One option is to impose a levy based on the size of a mining operation. This could be based on output or on the size of a workforce.

Q: A board of examiners providing greater regulatory oversight

What do you think?

- Do you agree with the proposed functions for a board of examiners? Is there anything you would suggest that we do differently?
- Should we work towards a joint New Zealand/Australia accreditation process, or have an independent New Zealand board of examiners that maintains close links with Australian counterparts?
- Should the industry fund the board of examiners through the payment of a levy? If yes, should the levy be based on output or the size of the workforce? If not, how should the board be funded?

Health and safety responsibilities and training for mine managers

The Royal Commission recommends:

- Mine managers should be appropriately trained in health and safety[18]
- Mine managers should take responsibility for critical features of a mining company's health and safety management systems[19]
- The regulator issues an approved code of practice to guide managers on health and safety risks.[20]

Key issues

40 The key issue underlying this set of recommendations is that health and safety matters need to be the responsibility and concern of mine managers, not just the people specifically employed to look after them. Mine managers need to show leadership in health and safety and to make sure all the necessary systems are in place. To do this they need the skills to be able to identify the risks of non-compliance with health and safety requirements across a worksite and in each area of operation.

What we propose

RISK MANAGEMENT COMPETENCIES FOR MINE MANAGERS

41 We propose to include risk management competencies (aligned to the Queensland requirements) in the competency requirements for both mine managers and the new position of site senior executive. The new mining regulations will include more clearly defined responsibilities and competencies for mine managers as well as for site senior executives, which will also address the Royal Commission's concerns regarding the health and safety responsibilities of mine managers.

GUIDANCE FOR MINING SECTOR MANAGERS

42 We have already convened a working group involving the Ministry, mining industry representatives, practitioners, and academics to develop guidance for mining sector managers on creating a workplace culture that values health and safety. This guidance will be based on similar UK guidance and should be available by the end of July 2013.

19. Recommendation 8
20. Recommendation 10
21. Recommendation 9

CHAPTER FOUR

04

Worker participation

What we propose:

All mining operations must have documented worker participation systems	Currently, worker participation systems are only required if an organisation employs at least 30 people, or where an employee or union requests it. The requirement to document a worker participation system is new.
All workers, including contractors, will be covered	All mine workers (employees and contractors) will be covered by worker participation systems and requirements to ensure adequate training and supervision.
Results of health and safety monitoring to be provided to all mine workers	The results of general monitoring of workplace conditions and the health and safety of workers will be given to all mine workers, not just made available on request.
Site health and safety representatives will have new powers	These include the ability to inspect a mining operation, and stop operations where there is immediate danger to workers. We propose a number of checks and balances to the new functions and powers, including: › The need for training › That mine production should not be unnecessarily impeded › That the exercise of functions and powers be for health and safety purposes only, and › The regulator can overturn a stop work order or remove a representative not carrying out functions satisfactorily
Industry health and safety representatives are to be established	This will implement the recommendation concerning “check inspectors”. Industry health and safety representatives will operate at the industry wide level. They are distinguished from the existing health and safety representatives, who operate at the site specific level. Industry representatives will be appointed and paid for by a union or other group of mine workers. Appropriate training and qualifications will include a deputy’s certificate of competence. A number of checks and balances are proposed, as for site health and safety representatives.

These proposals address the Royal Commission's recommendations to improve mine worker involvement in health and safety processes (recommendation 11).

Chapter two, which sets out the new regulatory framework, also includes proposals to involve workers in the development of principal hazard management plans and principal control plans.

The Royal Commission's recommendations concerning the promotion of workers' rights, inspectors consulting workers and health and safety representatives, and the issue of funding to train health and safety representatives are not dealt with here. These recommendations were referred to the Independent Taskforce on Workplace Health and Safety.

Implementing the proposals in this chapter will require a mixture of changes to the Health and Safety in Employment Act and new regulations. If the Government decides to make more widespread changes to the worker participation provisions of this Act, in response to the recommendations of the Independent Taskforce on Workplace Health and Safety, some of the mining specific provisions may no longer be needed.

04

The terms "worker participation" and "worker participation systems" are shorthand for the various ways that workers can get involved in the health and safety of their workplace. These can include developing health and safety policies and processes, providing access to health and safety information, electing workers as health and safety representatives to speak for other workers on health and safety matters, and setting up joint worker/employer health and safety committees.

Worker participation can improve health and safety outcomes and also lead to a better health and safety culture in workplaces. The Royal Commission found that there was inadequate mine worker involvement in health and safety.

We propose:

- All mining operations must have documented worker participation systems
- All mine workers, including contractors, are covered
- Results of health and safety monitoring go to all mine workers
- Site health and safety representatives have new functions and powers, and
- The establishment of industry health and safety representatives (check inspectors).

All mining operations to have documented worker participation systems

The Royal Commission recommends:

Operators of [underground coal] mines have documented worker participation systems.

Key issues

1 At present, the Health and Safety and Employment Act 1992 (the HSE Act) only requires a worker participation system to be in place if there are more than 30 employees or if an employee or union asks for one[22]. It is not compulsory to document a system.

2 Without a system and without documentation it is less likely that worker participation will take place. It is harder for workers to find out how they can get involved in health and safety. It is also more difficult for the regulator to see if a mine operator is complying with its obligations in this area if the worker participation arrangements are not written down.

What we propose

3 We propose that the HSE Act's 30 person threshold will no longer apply. All mining operations will be required to have a worker participation system, regardless of the size of the workforce.

4 We also propose that the worker participation system must be documented. However, the obligation to document would not be onerous, and we do not propose to specify how this would be done in the Act. Guidance on this issue would be provided by the regulator. The guidance could contain templates for what to include in, and how to document, a worker participation system.

22. Section 19C, Health and Safety in Employment Act.

All mine workers, including contractors, are covered

The Royal Commission recommends:

All workers, including contractors, are competent to work safely, are supervised and are included in the mine's worker participation system.

Key issues

5 The issue that underlies the Royal Commission's recommendations concerning contractors is that the relevant provisions of the HSE Act[23] only apply in relation to employees, not to contractors or other workers. This does not sit well with the fact that workers at mining operations are often a mix of employees, contractors and sub-contractors. All workers at a mining operation should be able to participate in improving the health and safety of their workplace.

What we propose

6 We propose amending the HSE Act so that the obligations to take practicable steps to ensure competency to work safely, and to ensure worker participation in health and safety, apply in relation to all workers at a mining operation. We would achieve this by:

- Using the concept of "mine worker" rather than employee. The definition of mine worker would cover all individuals who carry out work at a mining operation, including employees of a mine operator, contractors and employees of contractors.
- Placing an obligation on the site senior executive (see chapter two for details of this role) to ensure worker participation in health and safety.

23. Section 13 dealing with competency to do work safely, and Part 2A which sets out requirements for worker participation in health and safety.

Health and safety monitoring

The Royal Commission recommends:

The results of monitoring and investigation of health and safety in a mining operation are made available automatically to workers.

Key issues

7 The HSE Act currently only requires that employees are given the results of health and safety monitoring conducted on them personally as a matter of course[24]. The results of general monitoring of workplace conditions, or the health and safety of other workers, are only provided on request. These provisions about monitoring are separate from the obligation in the HSE Act for employers to ensure that workers are given ready access to health and safety information relating to what to do in an emergency, known hazards, and where safety equipment is kept[25].

8 The Royal Commission's view is that the results of general health and safety monitoring are important to enable a worker to understand his or her workplace conditions. What is more, workers may not want to alert others, including their employer, to their interest in workplace conditions by asking for this information.

What we propose

9 We propose to change the existing legal requirements so that workers at a mining operation are automatically given the results of health and safety monitoring relating to themselves, the conditions at their workplace, and the health and safety of the workers generally. The provisions of the HSE Act concerning privacy and the protection of personal information would continue to apply.

24. Section 11(2), Health and Safety in Employment Act.
25. Section 12, Health and Safety in Employment Act.

Site health and safety representatives have new functions and powers

The Royal Commission recommends:

Trained worker health and safety representatives are empowered to perform inspections and to stop activities where there is an immediate danger of serious harm.

Key issues

10 The role of a site health and safety representative is to represent their fellow workers in health and safety matters in their workplace. The Royal Commission found that the powers and functions of health and safety representatives, provided in the HSE Act, were not sufficient in a workplace as hazardous as a mine. It recommended two new functions and powers: inspection and stop work.

11 The Royal Commission considered that the inspection function would make health and safety representatives at mining operations more effective, as this would provide a fuller picture of workplace hazards and their management than they could obtain from examining documents and talking to workers.

12 In recommending the power to stop operations, the Royal Commission acknowledged that employees can already refuse to perform work likely to cause serious harm[26]. However, employees may not have sufficient training or information to make an informed decision to stop work, and may worry that stopping work could jeopardise their employment or contract.

What we propose

A NEW APPROACH TO DETERMINING FUNCTIONS AND POWERS

13 The HSE Act leaves it to employers, employees and unions to agree on a worker participation system, including whether the system will include a site health and safety representative or representatives, and what functions the representative will have. If they cannot agree on a system, the Act provides that employees can elect at least one health and safety representative for their workplace, who can carry out certain functions.[27]

14 We propose to take a different approach for mining operations, similar to that followed in the Australian mining states. The core functions and corresponding powers of health and safety

26. Section 28A, Health and Safety in Employment Act.

27. Section 19C(3), Health and Safety in Employment Act. However, if the parties are unable to agree on a participation system within six months, and a health and safety representative is chosen by election, the representative is required to:

- Foster positive health and safety management practices in the workplace;
- Identify and bring to the employer's attention hazards in the workplace, and discuss with the employer ways that hazards may be dealt with;
- Consult with inspectors on health and safety issues;
- Promote health and safety interests of employees, especially employees who have been harmed at work and who need assistance with rehabilitation;
- Carry out any functions agreed by the employer and the representative or any union representing them, including functions referred to in a code of practice.

Anyone who works to develop an employee participation system may use the functions described above as a guideline for the role of health and safety representatives.

representatives will be specified in the HSE Act, rather than being subject to agreement. If the parties wished to negotiate additional functions and powers they could still do so. A mine operator will not be able to object if mine workers decide to elect a health and safety representative or representatives. A default process for the election of representatives will be specified.

15 This approach would provide greater certainty within the mining industry concerning the functions and powers of health and safety representatives, and it would avoid the costs associated with negotiating functions. It also follows the Australian approach by listing both functions and the powers health and safety representatives need to carry out these functions. At present the HSE Act generally only provides for functions and not the corresponding powers. The exception to this is the power to issue hazard notices, which goes with the function concerning the identification of hazards.

THE NEW FUNCTIONS AND POWERS

16 We propose that a site health and safety representative has the following functions and powers (the table on page 57 provides more detail):

- *The functions and powers specifically recommended by the Royal Commission*. These were to inspect a mine, and to be able to stop mining operations in situations where there is immediate danger to workers.
- *Other functions and powers.* We propose a set of functions and corresponding powers that are drawn from the HSE Act, the Australian Model Work Health and Safety Act 2011 (the Australian model law), and Queensland's Coal Mining Safety and Health Act 1999 (the Queensland Act). These include hazard identification, investigating complaints from workers, and monitoring health and safety measures taken by a mine operator.
- *The inclusion of complementary provisions* that would provide checks and balances to the new functions and powers. The provisions that we propose are present in the Australian model law and the Queensland Act and include:
  - Site health and safety representatives are protected against interference or victimisation when they are performing their functions and exercising their powers. We are also considering whether to follow the Australian approach of providing immunity from liability for health and safety representatives who carry out their functions and powers in good faith[28].
  - Site health and safety representatives can only exercise their powers for health and safety (not employment relations or other) purposes.
  - The production of a mining operation would not unnecessarily be impeded by their activities[29].
  - The Chief Inspector of Mines would be able to remove a health and safety representative who was not performing his or her functions satisfactorily. There would be an appeal process.
  - A mines inspector can overrule a stop work order from a health and safety representative.

TRAINING REQUIREMENTS

17 The Royal Commission recommended that health and safety representatives should only be able to exercise the inspection function and the power to stop work if they have received "sufficient training in health and safety", but did not say what would be considered sufficient. One option is to require the same level of training the Royal Commission recommended for check inspectors (which we refer to as industry health and safety representatives), which is a deputy's certificate. The difficulties in requiring a deputy's certificate are that there are unlikely to be enough people with this qualification, and this qualification is not relevant to all types of mining.

18 Therefore we propose that the mining regulations enable the regulator to determine what is sufficient training for site health and safety representatives for different types of mining operation. We seek your views on what would be appropriate.

28. See for example, section 66 of the Queensland Work Health and Safety Act 2011.
29. Similar to sections 104 and 117 of Queensland's Coal Mining Safety and Health Act 1999.

Industry health and safety representatives are established

The Royal Commission recommends:

Unions are allowed to appoint check inspectors with the same powers as the worker health and safety representatives.

Key issues

19 The Royal Commission recommended establishing the position of union check inspector for the following reasons:

- They would provide an "extra set of eyes and ears, and a further line of defence" in health and safety in mines
- Experience in Queensland shows that workers are more willing to report problems to a union check inspector than to a mine inspector appointed by the regulator
- Union appointees are not subject to the same employment concerns as workers (including worker health and safety representatives), and
- Check inspectors could be particularly useful in small mines where establishing sophisticated worker participation systems may be more difficult and where site health and safety representatives may not be present.

20 A key issue in implementing this recommendation is distinguishing between the role of the existing site health and safety representatives, and the proposed check inspectors. We would also want to avoid any confusion between the role of the check inspector and the regulator appointed mine inspector. The Queensland Act provides some guidance on this. In the Queensland Act[30] there is a distinction between "site health and safety representatives" who are appointed for each mine site, and "industry health and safety representatives", who are appointed by a union and operate at an industry wide level.

What we propose

21 We propose implementing the Royal Commission's recommendation to establish union check inspectors in a similar way to Queensland.

INDUSTRY HEALTH AND SAFETY REPRESENTATIVE IS THE TERM USED

22 The term "industry health and safety representative" (IHSR) would be used rather than union check inspector. This would avoid confusion with the role of regulator appointed inspectors. The term "site health and safety representative" would be used to refer to the health and safety representatives elected by workers at a particular mining operation.

LEGISLATION ENABLES RATHER THAN REQUIRES APPOINTMENT

23 The legislation would be enabling, meaning it would allow the appointment of IHSRs by a union or other group of mine workers but would not require it. It would only enable the appointment of IHSRs in the mining industry, not other industries.

30. Set out in the Coal Mining Safety and Health Act 1999.

24 IHSRs would be funded by a relevant union or other group of mine workers, and would be available to assist all workers at a mining operation regardless of whether or not they are members of the union or group. It would be left to a union or other group of mine workers to decide how many IHSRs they would fund, and whether an appointment would be full or part time.

FUNCTIONS AND POWERS

25 A list of functions and corresponding powers would be specified in the Act (see the table on page 57 for details). This would include those recommended by the Royal Commission (to inspect mines, and to stop operations) and other functions and powers. The "other" functions and powers would include those proposed for the site health and safety representatives, as well as industry wide functions. The industry wide functions that we propose are taken from the Queensland legislation. They are to participate in investigations into serious and high potential incidents, to assist with industry wide initiatives to improve health and safety at mining operations.

26 We also suggest establishing a process, which could be specified through a code of practice or other guidance, for workers to report health and safety issues. This would usually be to a supervisor, a site health and safety representative and then a regulator appointed mines inspector before turning to an IHSR for assistance. However, workers would be able to take concerns directly to an IHSR if they were not comfortable or confident about raising them with one of the others.

CHECKS AND SAFEGUARDS FOR MINE OPERATORS

27 To provide some checks and balances to the new functions and powers, and to provide assurance to mine operators, the legislation would provide that:

- The IHSR could only exercise functions and powers for health and safety purposes (not employment relations or other purposes)
- Production should not be unnecessarily impeded
- A mines inspector could overrule a stop work order of an IHSR, and
- The Chief Inspector of Mines could terminate the appointment of an IHSR for unsatisfactory performance, including where an IHSR is carrying out functions and powers for non-health and safety purposes. There would be an appeal process.

PROTECTIONS FOR REPRESENTATIVES

28 There would be protections for IHSRs against interference or victimisation when they are performing their functions and exercising their powers. A mine operator, SSE, contractor or supervisor must not prevent or attempt to prevent a health and safety representative from performing functions or penalise a representative for performing the functions.

29 We are also considering whether there should be immunity from liability.

TRAINING AND QUALIFICATIONS

30 IHSRs would need appropriate qualifications and training. It is proposed that a deputy's certificate be the minimum requirement. This would apply whether the IHSR was appointed by a union or other group of mine workers.

REGISTRATION AND IDENTIFICATION REQUIREMENTS

31 The appointed IHSRs would need to register with the regulator and show they have the necessary qualifications. Registration would provide a means for mine operators to verify the legitimacy of a person claiming to be an IHSR. The display of identification is also being considered.

TABLE OF PROPOSED FUNCTIONS AND POWERS OF SITE AND INDUSTRY HEALTH AND SAFETY REPRESENTATIVES

32 The following table provides a snapshot of our proposals for functions and powers of health and safety representatives, and the associated checks and balances, along with some explanation of where these proposals originate (see key below for details of the legislation referred to). Please note that some of the powers apply to more than one of the functions listed.

33 These functions, powers and the checks and balances apply to both site specific and industry wide representatives. The exceptions are those functions listed in the table under "Extra functions for IHSRs".

PROPOSED FUNCTIONS AND POWERS OF SITE SPECIFIC AND INDUSTRY WIDE HEALTH AND SAFETY REPRESENTATIVES	
Functions	**Powers**
Investigate complaints from workers regarding health and safety, and if asked, represent the worker in that matter *From the Australian model law*	Attend an interview with a worker *The corresponding power to the function concerning representation of workers – from the Australian model law*
Identify hazards or risks *This is an existing function under the HSE Act, with the addition of risk. The Australian equivalents are: "detect unsafe practices and conditions" or "inquire into anything that appears to be a risk"*	Issue hazard notices *This is an existing power under the HSE Act, but we propose to modify it so an employer that receives a hazard notice must provide a copy to the regulator. It is the corresponding power to the identification of hazard function.*
	Direct operations to cease in situations where there is a likelihood of immediate danger to workers. › A representative would need to be suitably qualified to carry out this power › Mine operator must be informed › Regulator/mines inspector could overrule › Consultation and dispute resolution processes would apply *This power was recommended by the Royal Commission and versions of it appear in both the Australian model law and the Queensland Act. It is relevant to a number of the proposed functions.*
Inspect a mining operation › Site senior executive (SSE) may accompany representative › Representative must prepare report and provide copies to SSE and inspector › Serious issues to be reported to an inspector *This function was recommended by the Royal Commission and appears in the Australian model law and the Queensland Act*	Enter a mining operation at any time to carry out functions, after giving reasonable notice *This is the corresponding power to the inspection function. It enables the representative to enter a mining operation to carry out an inspection or other function of the representative. It appears in the Queensland Act*

PROPOSED FUNCTIONS AND POWERS OF SITE SPECIFIC AND INDUSTRY WIDE HEALTH AND SAFETY REPRESENTATIVES (CONTINUED)

Functions	Powers
Monitor measures taken by the mine operator relevant to health and safety *This is a mining specific modification of the Australian model law function concerning monitoring measures taken by a person in charge of a business undertaking.*	Receive information/examine documents concerning health and safety *This is a combination of provisions under the HSE Act, the Australian model law and the Queensland Act. It is related to a number of the proposed functions.*
	Consult a mines inspector *From the HSE Act* Accompany an inspector during an inspection *From Australian model law*
	Request reasonable assistance from the site senior executive or supervisor *This is a combination of powers under the Australian model law and the Queensland Act. It is relevant to all of the proposed functions.*
Advise the site senior executive if believe a health and safety management system to be inadequate *From Queensland Act*	
Extra functions for IHSRs	
Participate in investigations into serious incidents and high potential incidents *From Queensland Act*	
Help in relation to initiatives to improve health and safety *From Queensland Act*	
Checks and balances for mine operators	
Functions and powers must only be exercised for health and safety (not employment relations or other) purposes *From the Queensland Act*	
Representative can be removed from office by the Chief Inspector of Mines if not carrying out functions or powers satisfactorily (e.g. for non-health and safety purposes) *From Queensland Act, although removal in that case is by the Minister*	
Regulator (mines inspector) can overrule a stop work order of a health and safety representative *From Queensland Act*	
Production at a mining operation not to be unnecessarily impeded (by a stop work order) *From Queensland Act*	
Protections for representatives	
Mine operator, SSE, contractor or supervisor must not: › Prevent or attempt to prevent a health and safety representative from performing functions, or › Penalise a representative for performing the functions *From the Queensland Act*	
Key: IHSR: industry health and safety representative Australian model law: Australian Model Work Health and Safety Act 2011 The HSE Act: Health and Safety in Employment Act 1992 The Queensland Act: Queensland's Coal Mining Safety and Health Act 1999	

Q: Increased worker participation in health and safety in mining operations

What do you think?

- Do you support the proposed approach for applying worker participation to contractors? Do any difficulties arise; for example, from the use of the "mine worker" concept?
- Do you agree that we should replace the current approach for determining the functions of a site health and safety representative, which is for employers, employees and unions to negotiate these, and instead specify a list of functions? Should the parties be able to negotiate functions and powers in addition to those specified in the HSE Act?
- Do you support the proposed mix of functions, powers and complementary provisions for site and industry wide health and safety representatives? What do you suggest we do differently?
- Are the industry wide functions from the Queensland legislation appropriate? What other industry wide functions could the proposed industry health and safety representatives undertake?
- Do we need to provide immunity from liability for site and industry health and safety representatives?
- What level of training and qualifications do you think should be required for site health and safety representatives?
- What level of training and qualifications do you think should be required for industry health and safety representatives? Is the deputy's certificate an appropriate level of qualification for an industry health and safety representative for all types of mining operations?
- What issues should be covered in a code of practice for worker participation? What sort of guidance on the documentation of worker participation systems would be useful?

Note for submitters: as noted in the introduction, in order to implement the Royal Commission recommendations by the end of 2013, the Bill making the necessary legislative changes on issues such as worker participation will need to be introduced to Parliament by the end of June, before the consultation on the proposals in this discussion document is complete. We still encourage you to make a submission on the worker participation proposals, as officials can take these into account when advising the Minister of Labour and the parliamentary select committee on what changes should be made to the Bill after introduction and before it is passed. You can also make submissions on the worker participation provisions of the Bill directly to the select committee.

CHAPTER FIVE

05

Emergency management

What we propose:

Emergency management procedures and strengthened minimum standards are set out in the regulations	This will include procedures for self rescue by workers and rescue by emergency responders. There will also be new and strengthened minimum standards (also called outcome requirements) for emergency preparedness. The biggest change will be to the emergency equipment and facilities that are required (see below).
New requirements for emergency equipment and facilities in underground mines	Required equipment and facilities for self rescue in underground mines will include: early warning systems, breathing devices, changeover stations, fresh air bases and refuges, second means of egress, navigational aids, vehicular exit, and communication and personnel location systems. What is required will depend on the type of mine. Underground coal mines must have equipment or facilities to: › Monitor atmospheric conditions during and after an emergency › Seal and inertise a mine.
All mining operations must have an emergency management plan	Emergency management plans will: › Set out the processes for self rescue by workers and rescue by emergency responders › Specify the emergency facilities and equipment at a mining operation to support rescue › Be audited, and tested regularly through emergency exercises › Be developed in consultation with workers and the Mines Rescue Service or relevant emergency services.
The Mines Rescue Service has broader coverage and is better funded	The Mines Rescue Trust Act 1992 will be amended to better reflect the role of the Mines Rescue Service (MRS) in training mines rescue brigades, responding to emergencies and helping operators with emergency planning. The MRS coverage will extend beyond coal mines to underground metalliferous mines and large or long tunnels. The levies that fund the MRS will change. All mining operations within scope will need to contribute. The liability of the MRS for any damage caused by actions done in good faith as part of its role during rescue operations will be limited.

These proposals address the Royal Commission's concerns about emergency preparedness, equipment and facilities (recommendations 13, 15, and 16).

The Royal Commission's concerns about the Co-ordinated Incident Management System (CIMS) (recommendation 14) are being addressed through the development of an interagency process for large-scale mining emergencies, which will be tested by December 2013.

Emergency preparedness and management is critical. Mine operators need to plan for how they will deal with an emergency, ensure that all the necessary equipment and facilities are in place, and test emergency management plans regularly to make sure that everyone knows what to do. Workers and emergency responders also need to be involved in this planning and testing.

The Royal Commission found that New Zealand's mining regulations were inconsistent with international best practice in not requiring the testing and auditing of emergency procedures. It also found that our regulatory framework did not contain sufficient requirements for self-escape equipment and facilities, or for emergency mine sealing and inertisation.

In this chapter we address the following issues:

- Emergency preparedness (including requirements for emergency procedures, equipment and facilities, and emergency management plans)
- The functions and funding of the Mines Rescue Service, and
- Improved co-ordination by emergency responders.

Emergency preparedness

The Royal Commission recommends:

Emergency management in underground coal mines needs urgent attention[31]:

- Operators of underground coal mines should be required by legislation to have a current and comprehensive emergency management plan that is audited and tested regularly
- The emergency management plan should be developed in consultation with the workers and the Mines Rescue Service
- The emergency management plan should specify the facilities within the mine, such as emergency equipment, refuges and changeover stations, and emergency exits
- The emergency management plan should contain a strategy for notifying next of kin and ensuring that genuine enquirers receive appropriate information
- The mining operator must keep and regularly update a comprehensive list of emergency contact details for all workers
- The emergency management plan needs to be compatible with CIMS, the Co-ordinated Incident Management System used by New Zealand's emergency services and the police
- The regulator should include emergency management in its audit programme.

To support effective emergency management, operators of underground coal mines should be required to have modern equipment and facilities[32]:

- Operators should be required to have equipment and facilities to support self-rescue by workers during an emergency
- Operators should be required to include, in their emergency management plans, provisions for continued monitoring of underground atmospheric conditions during an emergency
- Operators should be required to install facilities that will support emergency mine sealing and inertisation.

Key issues

1 The Royal Commission stressed the need to adequately plan for a mining emergency, and to test those plans. It found that while the Health and Safety in Employment Act 1992 contains a general requirement to develop procedures to deal with emergencies, there is no specific requirement for mines to have emergency management plans, or for those plans to be tested or audited.

2 The Royal Commission also found that the regulatory framework for mining in New Zealand did not contain sufficient requirements for self-escape facilities, or for emergency mine sealing and inertisation. It also identified some specific equipment and facilities needed in underground mines.

31. Recommendation 13
32. Recommendation 16

What we propose

3 The new mining regulations will have a number of requirements concerning emergency preparedness. These will require mine operators to:

- Put in place emergency management processes
- Meet minimum standards, including the need to have modern emergency equipment and facilities, and
- Prepare and test emergency management plans (EMPs).

EMERGENCY MANAGEMENT PLANS

4 An EMP will set out the emergency management processes to be followed at a mining operation, and the emergency equipment and facilities that are available. The plans will provide valuable information to workers and emergency responders about what to do in an emergency in a particular mining operation.

5 EMPs will also show the regulator how, or if, the mining operation complies with requirements in the regulations concerning emergency management processes, and minimum standards for matters such as equipment and facilities. In other words, the EMP will show if a mining operation is properly prepared for emergencies.

How to prepare an EMP

6 The regulations will require mine operators to comply with the following requirements for the development, testing, maintenance, communication and review of EMPs:

- Ensuring that the EMP is written and communicated in plain language
- Developing the EMP in conjunction with the emergency services or the Mines Rescue Service, and reviewing and testing the EMP at least annually
- Providing copies of the EMP to the regulator, the Mines Rescue Service and other relevant emergency services, and
- Meeting process requirements for the display of an up to date plan of the mining operation, and providing copies of the plan to the Mines Rescue Service.

7 Because the EMP will be a type of principal control plan (discussed in chapter two), mine operators will also need to comply with the general requirements for the preparation of PCPs, such as consulting workers in the development of the plans, incorporating risk analysis, having the plans independently audited, and providing a copy of the plan to the regulator.

EMERGENCY MANAGEMENT PROCESSES

8 The regulations will set out processes for responding to emergencies. The following emergency processes will apply to all mining operations covered by the regulations (see chapter one concerning coverage):

- Triggers for activating the EMP
- The use of communications systems
- Providing information to affected persons
- Measures for isolating an area of the emergency
- Availability of trained personnel
- Evacuation
- Transportation
- First aid arrangements
- Fire fighting
- Conditions for withdrawal, and
- Notification of emergency services.

9 Underground mines will need to comply with additional emergency management processes. Examples include additional rescue capability for irrespirable atmospheres, underground communication systems, safe egress to the surface, training in the use of self-rescuers, and provision for emergency sealing of a mine.

10 More detailed information on the proposed emergency management processes is set out in technical appendix three (which details the requirements for principal control plans) and technical appendix eight (which provides an overview of the requirements for an EMP). Both appendices can be found in volume two.

11 As noted above, the EMP will need to show how a mining operation complies with these emergency process requirements.

MINIMUM STANDARDS FOR EMERGENCY PREPAREDNESS

12 The new regulations will strengthen and add to existing minimum standards (also referred to as outcome requirements) for emergency preparedness. The biggest changes concern the facilities and equipment that must be present at a mine to deal with emergencies (discussed below). Other minimum standards will include:

- Having a competent person at the surface to respond to an alarm (for underground mines), and
- Keeping and regularly updating a comprehensive list of emergency contact details for all workers.

13 As already noted, the EMP will need to set out how the mining operation complies with the minimum standards.

EMERGENCY EQUIPMENT AND FACILITIES FOR UNDERGROUND MINES

14 The regulations will set out minimum standards for the facilities and equipment that must be present at the mine to deal with emergencies. For underground mines, the following equipment and facilities will be required:

- Breathing apparatus, including self rescuers and additional apparatus in irrespirable atmospheres
- Self-rescuer change over stations (if change over is needed)
- Fresh air bases, refuges and secure areas (if needed)
- At least two practical means of egress
- Navigational aids to mark egress, self rescue change over stations and fresh air bases
- Communication systems, including the need for a fail safe or back up
- Equipment for use in the event of a crush injury
- Resuscitation equipment
- Transportation that is appropriate to move sick or injured persons
- Facilities to seal and inertise a mine, and
- Equipment to monitor atmospheric conditions during and after an underground coal mine emergency.

15 More detailed information on the proposed requirements is provided in technical appendices three and eight (in volume two). You will see that there are different requirements for underground coal and underground metalliferous mines.

16 The technical appendices also indicate some of the areas that will be dealt with in codes of practice. For example, the regulations will set out minimum standards for breathing apparatus, while the code of practice on emergency management will deal with forms of breathing apparatus (such as compressed air breathing apparatus, or CABA), allowing for changes in best practice. As

noted in chapter two, we are not consulting on the content of the codes of practice at this stage. Further information on the process and timetable for developing the codes is in technical appendix five (in volume two).

EMERGENCY EQUIPMENT AND FACILITIES FOR OPENCAST MINES

17 We do not propose new requirements for emergency equipment and facilities for opencast mines.

MINE OPERATOR TO ENSURE RESOURCES ARE AVAILABLE

18 The mine operator will be required to provide adequate resources to ensure the effective implementation of an EMP, including:

- Mine rescue arrangements (considered further in the next section)
- Ensuring that the mine has the necessary facilities and equipment, and
- Ensuring that the equipment and facilities are regularly inspected and maintained in a fully operational condition.

Mines Rescue Service

The Royal Commission recommends:[33]

The activities of the New Zealand Mines Rescue Service need to be supported by legislation:

- The Mines Rescue Trust Act 1992 should reflect the functions performed by the Mines Rescue Service.
- The adequacy and fairness of the current levies imposed on mines to fund the service need to be reviewed.

Key issues

19 The Mines Rescue Service (MRS) is operated by the Mines Rescue Trust, which is a charitable trust established under the Mines Rescue Trust Act 1992 (the MRT Act). The primary role of the MRS is to provide specialist search and rescue services in coal mine emergencies. It trains, equips and deploys volunteer rescuers to undertake mine rescues, and maintains rescue stations. The MRS also provides advice to mine operators during emergencies, and assists operators with the development and testing of their emergency management plans. Some of these services are funded through the payment of a levy (training brigades, purchasing equipment and maintaining rescue stations), and others are on a cost recovery basis (such as mobilising brigades and advice on emergency planning).

20 A key issue is that the MRT Act does not adequately describe the role or functions of the MRS as described above, including its critical role during a mine emergency. Another problem is that the levies fixed in the MRT Act do not adequately cover the costs of the MRS. The MRT Act is also not very clear about cost recovery.

What we propose

21 We propose a number of changes to the MRT Act, which will:

- Update the functions of the MRS
- Extend the coverage of the MRS beyond coal mines to other types of mining operation
- Change the make-up of the board of the Mines Rescue Trust to reflect its expanded coverage
- Change the way the MRS is funded, including the calculation of levies
- Enable the making of regulations concerning brigades, and
- Limit the liability of the MRS for any damage caused by actions done in good faith during rescue operations.

22 We also comment on the Royal Commission's discussion of the Australian model for the provision of mines rescue services.

THE FUNCTIONS OF THE MRS

23 All of the core functions of the MRS will be clearly set out in the MRT Act. The proposed core functions are as follows:

33. Recommendation 15

- Providing rescue stations, staff, facilities, and resources to support mines rescue services, including the power to purchase goods and services
- Establishing mines rescue brigades
- Ensuring mines rescue brigades have capacity to deal with mine emergencies, in particular, by providing mines rescue training programmes
- Mobilising mines rescue brigades in a mine emergency
- Providing technical advice and services to mine operators during a mine emergency, and
- Providing technical advice to mine operators in the development, review and scenario testing of their emergency management plans.

24 In addition to the "core" functions specified in the Act, the MRS will continue to be able to carry out "discretionary" functions (such as health and safety training for other organisations, and providing rescue services in other types of emergency) as long as these functions are consistent with its charitable purposes and are set out in its trust deed. These discretionary functions do not need to be covered in the MRT Act.

MRS COVERAGE BROADENED

25 Currently, the MRS core functions are only intended to cover underground and opencast coal mines. In line with the Government's intention that the new regulatory regime should cover mining generally and not just underground coal mines (see chapter one on coverage), we propose that the core functions of the MRS are expanded to include underground metalliferous mines and large or long tunnels beyond the duration of the breathing apparatus used by the New Zealand Fire Service. The expertise of the MRS in irrespirable atmospheres means that it can add value in these areas. This expertise is generally not needed in surface metalliferous mines or in quarries or tunnels where the expertise and equipment of the Fire Service and other emergency services is sufficient.

26 The proposed coverage for the MRS is a subset of the mining operations that will be covered by the new mining regulations.

THE MAKE-UP OF THE MINES RESCUE TRUST BOARD WILL CHANGE

27 The Mines Rescue Trust has a board of trustees (the board). The board's role is to ensure that the MRS is acting in accordance with its functions and other legal requirements, as set out in legislation and in its trust deed.

28 At present, the board is required to have five voting members: two from Solid Energy, one from the Coal Association of New Zealand, one from Westland rescue station area levy payers, and one representing the union. There is also a non-voting Crown member, and the board can nominate additional voting members.

29 We propose to change the composition of the board to reflect the expanded coverage of the MRS beyond coal mining. The board will have six voting members: two underground coal operators, one opencast coal operator, one underground metalliferous operator, one tunnel operator, one union member, and one non-voting Crown member. The board will continue to be able to nominate additional voting members.

30 We also propose requiring the board to provide levy payers with a copy of its annual report. While this is the current practice of the board, the MRT Act only requires that the report go to the regulator.

FUNDING FOR THE MRS

31 The core functions of the MRS, which will be set out in the MRT Act, will be funded by levies paid by mine operators. The exception to this is where a mines rescue brigade is mobilised to respond to an emergency at a mine. In this case, the MRS will continue to recoup its costs from the mine operator, and the mine operator will have a new duty to pay these costs.

Changes to the levy mechanism

32 The levy rate is set in the MRT Act, and is based on the amount of coal produced. The levy rate has not changed since 1992.

33 We propose that the levy rate is set by regulation, rather than in the MRT Act (a regulation-making power in the MRT Act will enable this). This will provide greater flexibility to change the levy when needed. There would be consultation with levy payers before any changes were made.

34 The Ministry is currently developing proposals for a new method of calculating the levy which would more fairly apportion costs between levy payers, and which is adequate to cover MRS services. Instead of the current production-based levies, we are looking at placing a greater emphasis on risk. We are also considering how large-scale emergency scenario testing would be funded. We will consult separately with the mining industry on these proposals by July 2013, and expect to have the new regulations in force by 1 April 2014.

35 The levy will be paid by the operators of the mining operations that come within the expanded scope of the MRS. This will include underground and surface coal mines, underground metalliferous mines, and large or long tunnels beyond the duration of the breathing apparatus used by the Fire Service.

36 The MRS will continue to be able to recover unpaid levies from mine operators as a debt due.

Cost recovery for emergency call outs

37 The MRS will continue to recoup the costs of mobilising brigades to respond to emergencies from the mine operator concerned. The difference is that the MRT Act will expressly state that mine operators have a duty to pay. The MRS will be able to recover unpaid costs from operators as a debt due (in the same way that they can currently recover unpaid levies).

38 We are also considering whether mine operators should have to make some sort of payment, to guard against the risk that the operator becomes insolvent in a catastrophic emergency, as happened with Pike River Coal Ltd. Options include an extra loading on the levy, an upfront bond or a fixed-term special levy on remaining operators after an event. We will consult with industry on proposals by July 2013, and expect to have the new regulations in force by 1 April 2014.

BRIGADES

39 Mines rescue brigades are currently made up of volunteers. There is no requirement for coal operators to make a certain number of people available to be part of brigades. The Royal Commission noted that both Queensland and New South Wales have quotas.

40 New Zealand has not had problems with mine operators refusing to release workers to participate in training or rescues, so we do not propose to follow the Australian approach. However, we do propose to include a regulation-making power in the MRT Act, which would allow the Government to make regulations concerning the availability of mine workers for brigades, if this is needed in the future. Consultation would be undertaken before any regulations were made.

LIMITATION OF LIABILITY

41 As noted by the Royal Commission there is no "limitation of liability" provision in the MRT Act for any damage caused by actions done in good faith during rescue operations. This is a standard provision for specified functions of other emergency response organisations, such as the New Zealand Fire Service. It is proposed that the MRT Act is amended to include such a provision.

THE AUSTRALIAN MODEL FOR PROVIDING MINES RESCUE SERVICES

42 The Royal Commission also discussed the Australian model for providing mines rescue services but did not make a recommendation on this.

43 As noted above, the Mines Rescue Service in New Zealand is run by the Mines Rescue Trust, which is a charitable trust recognised in the MRT Act. In Queensland and New South Wales, there is a more contestable framework under which registered companies are approved to carry out mine rescue functions that are set out in legislation.

44 We do not propose to move to a contestable framework, as the mining industry in New Zealand is too small to sustain this approach.

Q: Emergency preparedness, emergency management and the Mines Rescue Service

What do you think?

- Do you agree with the proposed emergency management processes for mining operations? What would you change?
- Do you agree with the proposed minimum standards for the emergency equipment and facilities that must be present at underground mines? What would you change?
- Do you agree with the proposed requirements for emergency management plans? What changes do you suggest?
- Do you agree with the proposed changes to the MRT Act, concerning functions, scope and levies of the MRS? What would you change?
- Do you have any suggestions on how the levy that funds the MRS should be structured?
- In making a submission you may wish to refer to the more detailed proposals concerning EMPs in technical appendices three and eight (in volume two).

Note for submitters: as noted in the introduction, in order to implement the Royal Commission recommendations by the end of 2013, the Bill making the necessary legislative changes on issues such as the Mines Rescue Service will need to be introduced to Parliament by the end of June, before the consultation on the proposals in this discussion document is complete. We still encourage you to make a submission on the Mines Rescue Service proposals, as officials can take these into account when advising the Minister of Labour and the parliamentary select committee on what changes should be made to the Bill after introduction and before it is passed. You can also make submissions on the provisions of the Bill concerning the Mines Rescue Service directly to the select committee.

Improved co-ordination by emergency responders

The Royal Commission recommends:

The implementation of the Co-ordinated Incident Management System (CIMS) in underground coal mine emergencies should be reviewed urgently:[34]

- The implementation of CIMS should be reviewed to ensure that emergencies in underground coal mines are well managed
- The review team should include the mining industry, police, emergency services, MRS and the regulator
- The CIMS framework should be rigorously tested by regular practical exercises at underground coal mines
- The incident controller at an underground coal mine emergency must have mining expertise and, together with the incident management team, must be responsible for co-ordinating the emergency effort and approving key decisions. This does not prevent a government agency, such as the police, from being lead agency or from maintaining its command structure.

Key issues

45 The Royal Commission found that there was a need for emergency responders to plan for large-scale underground mining emergencies involving multiple fatalities, and to test their plans. These plans should define the incident management structure and align to CIMS, the framework used by all the main emergency agencies in New Zealand. The Commission noted that the role of incident controller is pivotal, and recommended that the person carrying out this role should have mining expertise as well as incident management skills.

What we are doing

46 An interagency protocol for large-scale underground mining emergencies is being developed by emergency response agencies. The protocol will clarify the role and required skills of the incident controller. It will also address issues such as obtaining necessary equipment, supporting victims and families, and coordination with the Government.

47 We will consult with mine operators on the draft protocol, and test it by December 2013.

34. Recommendation 14

CHAPTER SIX

06 Transitional arrangements

We propose that the new regulatory framework for mining will come into effect in December 2013, but there will be transitional arrangements to allow duty holders time to comply with the new requirements. We propose that:

- Duty holders who commence new mining operations after the new regulatory framework is promulgated will be subject to all regulatory provisions from the date the regulations come into effect
- Existing mining operators will have 12 months from the date the regulations come into effect to meet any new requirements
- The Chief Inspector of Mines may grant an exemption of up to 36 months from the date the regulations come into effect, for reasons stipulated in the regulations, subject to the operator implementing suitable risk mitigation measures
- Statutory duty holders with existing time limited certificates of competence may continue to undertake their roles for the remainder of the term of their certificate
- Holders of life-time certificates will be required to gain new, time-limited certificates of competency within three years
- People appointed to the new safety critical roles, such as site senior executive, will be required to have the proposed competency requirements from the date of their appointment
- The new Mines Rescue Trust levy will come into effect from 1 April 2014, and
- The new governance board of the Mines Rescue Trust will assume office on 1 April 2014.

Q: Transitional arrangements

What do you think?

- Are the transitional phase-in provisions for the new regulatory approach reasonable?
- Are there any transitional issues that we have missed?

CHAPTER SEVEN

07 Implementation update

Pike River Implementation Plan

In response to the recommendations of the Royal Commission on the Pike River Coal Mine Tragedy

Lead(s) *Contributor(s)*	**Progress to date as at 23 May 2013**	**Future implementation plan**
Recommendation 1: To improve New Zealand's poor record in health and safety, a new Crown agent focusing solely on health and safety should be established		
MBIE *State Services Commission* *Independent Taskforce on Workplace Health and Safety*	Based on recommendations of the Royal Commission on the Pike River Coal Mine Tragedy (the Royal Commission) and the Independent Taskforce on Workplace Health and Safety the Government has agreed to establish a separate Crown agency for health and safety by December 2013. › The Ministry of Business, Innovation and Employment (MBIE) has separated out the Health and Safety Group within its structure so that these functions can be readily transferred to the new Crown agent. › MBIE has set up an establishment unit to lead the formation of a Crown agent and ensure a smooth transfer of functions from MBIE to the new regulator. › MBIE has developed an implementation plan for the formation of the Crown agent and transfer of functions from the Ministry. › MBIE has established a governance group at Deputy Chief Executive level with central agency representation that will oversee all of the health and safety transformational work being undertaken across MBIE. › The Minister of Labour has sought nominations to an establishment board to oversee the formation of a new workplace health and safety agency. The establishment board will be responsible for setting the strategic direction of the new entity and it will oversee the work needed for a smooth transition of health and safety functions from MBIE to the Crown agent. › MBIE has commenced work on a business case to investigate the investment options to lift health and safety performance. Included will be the cost and funding implications of establishing a new agency and this work will align with consideration of the recommendations of the Independent Taskforce	**June 2013** Legislation to establish the agency and enact its functions is introduced to the Parliament. **May – July 2013** Cabinet considers the advice of the Independent Taskforce on Workplace Health and Safety, and any implications for the scope and design of the new agency. Subsequent implementation actions depend on the decisions taken by the Cabinet. **July 2013** The establishment board is expected to be in place.

Lead(s) *Contributor(s)*	**Progress to date as at 23 May 2013**	**Future implementation plan**
Recommendation 2: An effective regulatory framework for underground coal mining should be established urgently		

MBIE
 	
Expert Reference Group
 	
Independent Taskforce on Workplace Health and Safety
	The Government agrees with this recommendation and intends that the new regulatory framework should be developed for all mining operations in New Zealand, not just underground coal mining.
	
	The Government released a public discussion document on proposals for new mining regulations at the end of May 2013. The Government will be introducing supporting legislation into Parliament in June 2013.
	
	As part of developing the proposals in the May 2013 discussion document:
	› The Government has established an Expert Reference Group of international and New Zealand mining/regulatory experts, emergency management experts, industry and employee participants. The Expert Reference Group advises MBIE and ensures it establishes a new mining regulatory framework that meets international best practice.
	› MBIE has established a dedicated team to oversee the implementation of the Royal Commission's recommendations, with input from other agencies as required.
	› MBIE has established a monthly industry/union consultation forum to discuss draft MBIE proposals for new mining regulations. This forum has met monthly since February 2013.
	› MBIE has established a cross-agency senior officials group to provide whole-of-Government oversight and governance of this work. The group meets monthly.
	
	At an operational level:
	› The new High Hazards Unit now provides a differentiated approach to inspection and standard setting for the mining and petroleum sectors.
	› A comprehensive practice improvement programme is rolling out in the health and safety inspectorate, including the High Hazards Unit.
	› The Crown Minerals Act amendments will introduce measures to improve coordination across regulatory agencies such as annual review meetings, and information sharing.
	› Amendments to the Electricity (Safety) Regulations come into effect on 1 July 2013. They update the safety certification requirements to implement a risk-based graded certification system. They:
	  › require independent verification (by a registered electrical inspector) of the safety of the electrical system in mines
	  › clarify the obligations for designers and suppliers of electrical equipment in respect of the installation instructions supplied
	  › require a register of high-hazard installations.
	› A new inter-agency steering group is sharing best practice across agencies and discussing policy to promote an 'end to end' approach to petroleum and mineral extraction. It has held seven meetings to date, led by MBIE's New Zealand Petroleum and Minerals branch.
	› Additional consideration of health and safety and environmental issues is now taking place at the earliest practical stage in the mineral and resources permitting process.
	› MBIE and the Environmental Protection Authority were involved in the resource allocation process for the 2012 Block Offer, and in the development of Exclusive Economic Zone and Crown Minerals legislation.
		As part of the process for developing a new mining regulatory framework, MBIE is now consulting publically on proposals for new regulations.
		
		Key milestones in developing the new mining regulatory regime from May 2013 include:
		
		May – June 2013
		
		Public consultation takes place on the regulatory proposals.
		
		June 2013
		
		Legislation to support the implementation of the regulations is introduced to the Parliament.
		
		July – August 2013
		
		MBIE drafts the regulations, taking account of the submissions from the public consultation.
		
		August – September 2013
		
		MBIE consults affected parties on the draft regulations.
		
		November 2013
		
		Cabinet approves the regulations.
		
		The Expert Reference Group continues its oversight of:
		› The development of Approved Codes of Practice to supplement mining regulations
		› The revision of Mines Rescue Service enabling legislation
		› The work to align the regulations and Crown Minerals Act approval and review processes.

Lead(s) *Contributor(s)*	**Progress to date as at 23 May 2013**	**Future implementation plan**
Recommendation 3: Regulators need to collaborate to ensure that health and safety is considered as early as possible and before permits are issued **Recommendation 4: The Crown Minerals regime should be changed to ensure that health and safety is an integral part of permit allocation and monitoring**		
MBIE	The Government supports these recommendations. It has given effect to the recommendations through the Crown Minerals (Permitting and Crown Land) Bill. The Bill passed its Third Reading in Parliament on 10 April 2013, and the resulting Act has now come into force. › The amended Act creates new health and safety requirements for exploration and separate permits for mining. › The amended Act introduces an initial assessment of a permit applicant's health and safety and environmental management capability. This would not replace or duplicate the requirements under other relevant legislation. It will ensure that permits are awarded only to applicants equipped to fully carry out their work programmes. › The amended Act also introduces the requirement for tier 1 permit holders (e.g. petroleum and underground mining) to attend annual work programme review meetings with other regulators. › The amended Act also allows the sharing of information across agencies to help them in their role of regulating activities in the sector. These changes will support the better coordination of regulatory activities.	**The Government's actions to give effect to this recommendation have been completed.** Ongoing implementation actions include: › The alignment of mining regulations and Crown Minerals Act approval and review processes. › The development of internal MBIE and cross-government processes to support different regulators to engage early on health and safety matters. › The review of health and safety compliance by permit holders. › The development of a standard information pack on health and safety laws and regulations for mining permit applicants. › The confirmation of information management requirements to give effect to permit application assessments.
Recommendation 5: The statutory responsibilities of directors for health and safety in the workplace should be reviewed to better reflect their governance responsibilities		
MBIE **Independent Taskforce on Workplace Health and Safety** *Institute of Directors*	The Government agrees that a review of health and safety governance is necessary. The Government has requested the Independent Taskforce on Workplace Health and Safety to report on the most appropriate action to implement governance responsibilities and competencies of directors for health and safety in all workplaces. The Government has also asked the Independent Taskforce to consider and provide advice on the merits or otherwise of introducing the offence of corporate manslaughter. The Independent Taskforce reported to the Government on these and other issues on 30 April 2013. The Government is now considering the Taskforce's recommendations.	**May – July 2013** The Government considers the recommendations of the Independent Taskforce. Subsequent implementation actions depend on the decisions taken by the Cabinet. The Government introduces new health and safety legislation into Parliament later in 2013, including actions to implement the Independent Taskforce's recommendations.

Lead(s) *Contributor(s)*	**Progress to date as at 23 May 2013**	**Future implementation plan**
Recommendation 6: The health and safety regulator should issue an approved code of practice to guide directors on how good governance practices can be used to manage health and safety risks		
MBIE **Independent Taskforce on Workplace Health and Safety** **Institute of Directors**	The Government agrees that a review of health and safety governance is necessary. The Government has requested the Independent Taskforce on Workplace Health and Safety to report on the most appropriate action to implement governance responsibilities and competencies of directors for health and safety in all workplaces. The Government has also asked the Independent Taskforce to consider and provide advice on the merits or otherwise of introducing the offence of corporate manslaughter. The Independent Taskforce reported to the Government on these and other issues on 30 April 2013. The Government is now considering the Taskforce's recommendations. In addition to the Taskforce's work, the MBIE undertook to prepare by April 2013, in conjunction with the Institute of Directors, guidance material for directors on how good governance practices can manage health and safety risks.	**The Government has met its commitment to issue, in conjunction with the Institute of Directors in New Zealand, a guidance document for Directors.** The guidance document outlines how good governance practices can manage health and safety risks, and the responsibilities of directors for health and safety in the workplace as they stand under the current Health and Safety in Employment Act. The Minister of Labour launched the guidance document on 20 May 2013. **Ongoing implementation actions include:** MBIE and the Institute of Directors are undertaking an information programme which will help directors understand their obligations. When any legislative changes are made an Approved Code of Practice will be developed for directors and others giving effect to their duties. The actions regarding the implementation of recommendation 5 are also relevant: **May – July 2013** The Government considers the recommendations of the Independent Taskforce. Subsequent implementation actions depend on the decisions taken by the Cabinet. The Government introduces new health and safety legislation into Parliament later in 2013, including actions to implement the Independent Taskforce's recommendations.
Recommendation 7: Directors should rigorously review and monitor their organisation's compliance with health and safety law and best practice		
MBIE **Independent Taskforce on Workplace Health and Safety** **Institute of Directors**	The Government agrees with this recommendation. While industry has primary responsibility for implementing this recommendation, MBIE and the Institute of Directors are working together to promote improvements to implement recommendations 5 and 6. The Independent Taskforce reported to the Government on these and other issues on 30 April 2013. The Government is now considering the Taskforce's recommendations.	**May – July 2013** The Government considers the recommendations of the Independent Taskforce. Subsequent implementation actions depend on the decisions taken by Cabinet. The Government introduces new health and safety legislation into Parliament later in 2013, including actions to implement the Independent Taskforce's recommendations. In addition to the above: **May 2013 onwards** Following the Minister of Labour's launch of the new guidance document for Directors on 20 May 2013, MBIE and the Institute of Directors are carrying out an information programme to help directors understand their obligations regarding health and safety compliance in the workplace and to support the release of the guidance document.

Lead(s) *Contributor(s)*	**Progress to date as at 23 May 2013**	**Future implementation plan**
Recommendation 8: Managers in underground coal mines should be appropriately trained in health and safety **Recommendation 9: The health and safety regulator should issue an approved code of practice to guide managers on health and safety risks, drawing on both their legal responsibilities and best practice. In the meantime, managers should consult the best practice guidance available**		
MBIE *Expert Reference Group* *Industry* *Industry training organisation*	The Government endorses these recommendations. While industry has a critical role in implementing recommendation 8, to ensure this happens new mining regulations will tighten competency requirements for mine managers and align assessment and review processes with Australian jurisdictions. The Government released a public discussion document on proposals for new mining regulations at the end of May 2013. These proposals include new training and competency requirements for mine managers. In response to recommendation 9, MBIE will: › develop a guidance document for mine managers on health and safety risks, to be completed by the end of July 2013. In March, MBIE tested the practicability of applying readily available United Kingdom guidance in New Zealand as part of this work, and proposes to use the UK guidance as a starting point. In April, the Ministry established a MBIE/industry working group to oversee the guidance for mine managers. › support further improvements in competency through its implementation of recommendations 10 and 12.	The work required under these recommendations is closely linked to the new regulatory regime for mining that the Government will be developing under recommendation 2. As part of the process for developing a new mining regulatory framework – including new training and competency requirements for mine managers – MBIE is now consulting publically on proposals for new regulations. Other actions include: **July 2013** MBIE releases a guidance document for mine managers under the current Health and Safety in Employment Act. When regulatory and legislative changes are made, MBIE will develop an Approved Code of Practice for mine managers giving effect to their duties. **Ongoing** The High Hazard Unit will develop technical guidance for the mining sector. This will include codes in support of the management of hazards such as methane, strata control, inundation etc. (MBIE/ industry working groups for the development of these Approved Codes of Practice were established in March 2013).
Recommendation 10: Current regulations imposing general health and safety duties on the statutory mine manager should be extended to include detailed responsibilities for overseeing critical features of the company's health and safety management systems		
MBIE *Expert Reference Group*	The Government supports this recommendation. Clarity of health and safety duties is especially important in high hazard workplaces such as in the mining industry. The Government released a public discussion document on proposals for new mining regulations at the end of May 2013. These proposals include detailed requirements for the maintenance of health and safety management systems, and they establish new accountabilities and audit processes, including the establishment of a new site senior executive role for mines, as is in place in Queensland.	The work required under these recommendations falls under the work for implementing recommendation 2, with similar timeframes. As part of the process for developing a new mining regulatory framework – including new proposals for a Senior Site Executive to oversee critical features of a mine's health and safety systems – MBIE is now consulting publically on proposals for new regulations. The Site Senior Executive role may require legislative amendment. If it does, this will be included in the legislation to be introduced in June 2013.

Lead(s) *Contributor(s)*	**Progress to date as at 23 May 2013**	**Future implementation plan**
Recommendation 11: Worker participation in health and safety in underground coal mines should be improved through legislative and administrative changes		
MBIE *Expert Reference Group* *Unions*	The Government supports this recommendation. Worker participation is critical to ensuring good health and safety in workplaces. The Government released a public discussion document on proposals for new mining regulations at the end of May 2013. The public discussion document includes proposals for implementing the Royal Commission's recommendations on enhanced worker participation in the mining industry. The Government has also requested the Independent Taskforce on Workplace Health and Safety to report on the most appropriate action to improve worker participation in all industries, as part of improving the performance of the health and safety system. The Independent Taskforce reported to the Government on these and other issues on 30 April 2013. The Government is now considering the Taskforce's recommendations. In addition, the High Hazards Unit inspectors consult with workers and health and safety representatives as part of their audit and inspection processes. This consultation is embedded in all aspects of the Unit's practice.	MBIE will develop worker participation proposals for the mining industry as part of the development of the new regulatory framework under recommendation 2. As part of the process for developing a new mining regulatory framework – including proposals for enhanced worker participation in the mining industry – MBIE is now consulting publically on proposals for new regulations. Key milestones in developing the new mining regulatory regime from May 2013 include: **May – June 2013** Public consultation takes place on the regulatory proposals, including mining worker participation provisions. **June 2013** Legislation to support the implementation of the regulations is introduced to the Parliament. **May – July 2013** The Government considers the recommendations of the Independent Taskforce. Subsequent implementation actions depend on the decisions taken by Cabinet. **July – August 2013** Draft regulations are prepared, including mining worker participation provisions. **August – September 2013** Affected parties are consulted on the draft regulations, including the mining worker participation provisions. **November 2013** Cabinet approves the regulations, including the mining worker participation provisions.
Recommendation 12: The regulator should supervise the granting of mining qualifications to mining managers and workers		
MBIE *MITO* *NZQA* *Expert Reference Group* *Australian Regulators*	The Government supports this recommendation. The regulator needs to provide greater leadership and quality assurance in this area, and it is sensible to look towards the Australian standards given the small size of New Zealand's mining industry. The Government released a public discussion document on proposals for new mining regulations at the end of May 2013. The public discussion document includes proposals for a Board of Examiners, convened by the regulator, to provide greater regulator oversight of the granting of mining qualifications. In addition: › MBIE is working with New South Wales and Queensland regulators to establish cross-jurisdictional qualifications and competency recognition frameworks. › The High Hazards Unit is working with industry training and standard setting bodies to develop standards and guidance to explicitly cover training materials.	MBIE will develop regulatory supervision for mining qualifications as part of recommendation 2 above, with the same milestones. As part of the process for developing a new mining regulatory framework – including proposals for a Board of Examiners convened by the regulator – MBIE is now consulting publically on proposals for new regulations. Refer also to Recommendations 8 and 10 which outline the development of revised competency standards for mining, including mine managers and the introduction of a requirement for a site senior executive.

Lead(s) *Contributor(s)*	**Progress to date as at 23 May 2013**	**Future implementation plan**
Recommendation 13: Emergency management in underground coal mines needs urgent attention		
MBIE (legislation) *Expert Reference Group* *Industry* *Police* *Other Emergency Agencies* *Mines Rescue Service* *Mines Rescue Trust* *Civil Defence/ Emergency Management*	The Government supports this recommendation. The Royal Commission found there is no guidance on this issue and there is a need for legislation. The Government released a public discussion document on proposals for new mining regulations at the end of May 2013. The public discussion document includes proposals for greater regulation for emergency planning and preparedness. The public discussion document also includes proposals for legislative reform of the Mines Rescue Service. The Government will be introducing supporting legislation into Parliament in June 2013. In addition: › MBIE has started work on the potential role of Chief Inspector Mines in future underground emergency response, search and rescue operations. › MBIE has started work on setting up a joint Memorandum of Understanding with Police and the Mines Rescue Service to guide the agencies' various roles and responsibilities. Any resulting Memorandum of Understanding will align with recommendations 13–16.	Regulations for emergency management in mines will be developed as part of recommendation 2 above, with the same milestones. As part of the process for developing a new mining regulatory framework – including proposals for greater regulation for emergency planning and preparedness – MBIE is now consulting publically on proposals for new regulations. **June 2013** Legislation to support the implementation of the regulations is introduced to the Parliament.
Recommendation 14: The implementation of the co-ordinated incident management system (CIMS) in underground coal mine emergencies should be reviewed urgently		
MBIE *Police* *Ministry of Civil Defence and Emergency Management* *Expert Reference Group* *Mines Rescue Service* *New Zealand Fire Service* *National Rural Fire Authority* *Civil Defence/ Emergency Management* *Industry*	The Government agrees a review of the way CIMS operates is sensible and timely. The Ministry of Civil Defence and Emergency Management is leading an all-of-Government review of the overall CIMS approach; a new manual will be available by mid 2013. The revised manual will set the overall approach for managing emergencies, including those in the mining sector. A specific protocol covering mining emergencies will also be developed. In May 2013 the Ministry convened a working group to start to develop the draft protocol for mining emergencies. The working group will also develop a plan for scenario-testing to validate the draft protocol.	**By July 2013** The draft protocol is finalised and MBIE identifies any changes in regulations that would be required to implement it. The working group establishes a detailed plan for the testing of the protocol.

Lead(s) *Contributor(s)*	**Progress to date as at 23 May 2013**	**Future implementation plan**
Recommendation 15: The activities of the New Zealand Mines Rescue Service need to be supported by legislation		
MBIE *Mines Rescue Trust* *Mines Rescue Service* *Expert Reference Group* *Independent Taskforce on Workplace Health and Safety (re levies)* *Industry*	The Government agrees with this recommendation, and agrees there is a mismatch between the terms of the Mines Rescue Trust Act and the service it delivers. The Mines Rescue Trust has been reconsidering its roles and functions alongside the Royal Commission and has provided proposals for reform to MBIE in March 2013. The Government released a public discussion document on proposals for new mining regulations at the end of May 2013. The discussion document includes proposals for legislative reform of the Mines Rescue Service. The Government will be introducing supporting legislation into Parliament in June 2013. MBIE is also reviewing the funding mechanisms/levels necessary to ensure the provision of a sustainable Mines Rescue Service. Proposals for change will be provided to industry for comment by July 2013.	MBIE is now consulting on proposals for revised mining regulations, including the activities and funding for the Mines Rescue Service. **May – June 2013** Public consultation takes place on the proposals for new regulations. Public consultation will include consideration of the broader aspects of Mines Rescue Service. **June 2013** Legislation to support the reform of the Mines Rescue Trust Act is introduced to the Parliament. **By July 2013** The Ministry consults industry on options for funding mechanisms and levels necessary to ensure the provision of a sustainable Mines Rescue Service.
Recommendation 16: To support effective emergency management, operators of underground coal mines should be required to have modern equipment and facilities		
MBIE *Expert Reference Group* *Industry*	The Government supports this recommendation. As the Royal Commission notes, miners usually need to rescue themselves. Mine operators need to have proper equipment, facilities and plans. Immediately after the Pike River Tragedy the then Department of Labour audited all underground mines for compliance with the regulations, including in the maintenance of emergency equipment, facilities and plans. The Government released a public discussion document on proposals for new mining regulations at the end of May 2013. The discussion document includes proposals for greater regulation for emergency equipment in mines.	The actions to implement this recommendation will be developed as part of the work on the new regulatory framework under recommendation 2. As part of the process for developing a new mining regulatory framework, MBIE is now consulting publicly on proposals for new regulations, including greater specification of emergency equipment in mines. Key milestones in developing the new mining regulatory regime from May 2013 include: **May – June 2013** Public consultation takes place on the regulatory proposals. **June 2013** Legislation to support the implementation of the regulations is introduced to the Parliament. **July – August 2013** Draft regulations are prepared. **August – September 2013** Affected parties are consulted on the draft regulations. **November 2013** Cabinet approves the regulations.

Full list of the recommendations of the Royal Commission

RECOMMENDATION	
1	**To improve New Zealand's poor record in health and safety, a new Crown agent focusing solely on health and safety should be established.** • The Crown agent should have an executive board accountable to a minister. • The chief executive of the Crown agent should be employed by and be accountable to the board. • The Crown agent should be responsible for administering health and safety in line with strategies agreed with the responsible minister, and should provide policy advice to the minister in consultation with the Ministry of Business, Innovation and Employment. • The ministry should monitor the Crown agency on behalf of the minister. • The Crown agency should be funded by the current levies but the basis of the levies should be reviewed for high-hazard industries.
2	**An effective regulatory framework for underground coal mining should be established urgently.** • The government should establish an expert task force to carry out the work. Its members should include health and safety experts and industry, regulator and worker health and safety representatives, supported by specialist technical experts. • The expert task force should be separate from the ministerial task force that is reviewing whether New Zealand's entire health and safety system is fit for purpose. • The expert task force should consult the Queensland and New South Wales frameworks as best practice. • In the interests of time, the expert task force should consider the immediate development of approved codes of practice, to be replaced by regulation where appropriate. • The expert task force should consider addressing urgently the specific issues identified by the commission including: • the removal of the 'all practicable steps' qualification from the mandatory provisions of the regulations, including those relating to ingress and egress;

- the provision of better health and safety information by the employer to the regulator, including notification of all high-potential incidents;
- requiring employers to have a comprehensive and auditable health and safety management system;
- mandating the statutory positions necessary to ensure healthy and safe mining (including a statutory mine manager and ventilation officer), and identifying their key functions and the relevant qualifications, competencies and training;
- defining standards for ventilation control devices, such as stoppings;
- defining the requirements of underground gas monitoring systems;
- prohibiting the placement of main fans underground and requiring them to be protected against explosions and other hazards, in accordance with the most appropriate international standards;
- clarifying the restricted zone within which electrical equipment requires protection; and
- updating electrical safety requirements in the light of new technology.

3

Regulators need to collaborate to ensure that health and safety is considered as early as possible and before permits are issued.

4

The Crown minerals regime should be changed to ensure that health and safety is an integral part of permit allocation and monitoring.

- The proposals in *Review of the Crown Minerals Act 1991 Regime* are endorsed.
- Mining permits should have a general condition requiring the need for compliance with the Health and Safety in Employment Act 1992 and regulations.
- The Ministry of Business, Innovation and Employment should provide information to prospective permit holders on health and safety laws and regulations.
- The ministry should review the information required from applicants for mining permits and the way it assesses applications against the criteria in the minerals programme.

5	**The statutory responsibilities of directors for health and safety in the workplace should be reviewed to better reflect their governance responsibilities.**
6	**The health and safety regulator should issue an approved code of practice to guide directors on how good governance practices can be used to manage health and safety risks.**
7	**Directors should rigorously review and monitor their organisation's compliance with health and safety law and best practice.**
8	**Managers in underground coal mines should be appropriately trained in health and safety.**
9	**The health and safety regulator should issue an approved code of practice to guide managers on health and safety risks, drawing on both their legal responsibilities and best practice. In the meantime, managers should consult the best practice guidance available.**
10	**Current regulations imposing general health and safety duties on the statutory mine manager should be extended to include detailed responsibilities for overseeing critical features of the company's health and safety management systems.** • The new regulations should have regard to the Queensland legislation applying to the mine's senior site executive. • The statutory mine manager should be protected by new procedures requiring disclosure to the regulator when the employer does not accept the manager's proposals for improving health and safety.

11 Worker participation in health and safety in underground coal mines should be improved through legislative and administrative changes.

- Legislative changes should:
  - require operators of underground coal mines to have documented worker participation systems;
  - ensure all workers, including contractors, are competent to work safely, are supervised and are included in the mine's worker participation system;
  - empower trained worker health and safety representatives to perform inspections and stop activities where there is an immediate danger of serious harm;
  - require the results of monitoring and investigation of health and safety in the workplace to be automatically made available to workers; and
  - allow unions to appoint check inspectors with the same powers as the worker health and safety representatives.
- The regulator should:
  - issue an approved code of practice on employee participation;
  - promote workers' rights and obligations through education and publicity; and
  - ensure that inspectors routinely consult workers and health and safety representatives as part of audits and inspections.

12 The regulator should supervise the granting of mining qualifications to mining managers and workers.

- The regulator should lead the work to strengthen standards so that they are comparable with those of Australia.
- The regulator should work with Australian counterparts towards developing a joint accreditation process with Australia and an Australia/New Zealand board of examiners.
- Additional statutory roles and qualifications are required in new regulations, including a statutory ventilation officer and an agreed level of industry training and supervision for all new or inexperienced workers.
- The regulator should work with the Accident Compensation Corporation and others on raising the standards of health and safety consultants.

13 Emergency management in underground coal mines needs urgent attention.

- Operators of underground coal mines should be required by legislation to have a current and comprehensive emergency management plan that is audited and tested regularly.
- The emergency management plan should be developed in consultation with the workers and the Mines Rescue Service.
- The emergency management plan should specify the facilities available within the mine, such as emergency equipment, refuges and changeover stations, and emergency exits.
- The emergency management plan should contain a strategy for notifying next of kin and ensuring that genuine enquirers receive appropriate information.
- The mining operator must keep and regularly update a comprehensive list of emergency contact details for all workers.
- The emergency management plan needs to be compatible with CIMS, the co-ordinated incident management system used by New Zealand's emergency services and the police.
- The regulator should include the emergency management plan in its audit programme.

14 The implementation of the co-ordinated incident management system (CIMS) in underground coal mine emergencies should be reviewed urgently.

- The implementation of CIMS should be reviewed to ensure that emergencies in underground coal mines are well managed.
- The review team should include the mining industry, police, emergency services, the Mines Rescue Service and the regulator.
- The CIMS framework should be rigorously tested by regular practical exercises at underground coal mines.
- The incident controller at an underground coal mine emergency must have mining expertise and, together with the incident management team, must be responsible for co-ordinating the emergency effort and approving key decisions. This does not prevent a government agency such as the police from being the lead agency or from maintaining its command structure.

15

The activities of the New Zealand Mines Rescue Service need to be supported by legislation.

- The Mines Rescue Trust Act 1992 should reflect the functions performed by the Mines Rescue Service.
- The adequacy and fairness of the current levies imposed on mines to fund the service need to be reviewed.

16

To support effective emergency management, operators of underground coal mines should be required to have modern equipment and facilities.

- Operators should be required to have equipment and facilities suitable for self-rescue by workers during an emergency.
- Operators should be required to include, in their emergency management plans, provisions for continued monitoring of underground atmospheric conditions during an emergency.
- Operators should be required to install facilities that will support emergency mine sealing and inertisation.

CHAPTER EIGHT

08

Glossary and Submission form

Glossary

ACOP	A code of practice approved under section 20 of the Health and Safety in Employment Act 1992
Australian model law	Australian Model Work Health and Safety Act (2011)
CABA	Compressed air breathing apparatus
CIMS	Co-ordinated Incident Management System, used by New Zealand's emergency services
Code of practice	A statement of preferred work practice (see also "ACOP")
Competency	The demonstrated skill and knowledge required to carry out a task to the standard necessary
Control measure	A measure taken to control risks to health and safety that are associated with a hazard
DPM	Diesel particulate matter
Duty Holder	A person or organisation with obligations under the HSE Act
EMP	Emergency management plan
EXITO	The former Extractive Industry Training Organisation
Goaf	The void created by coal extraction that is usually unsupported and susceptible to roof collapse
HSE Act	Health and Safety in Employment Act 1992
IHSR	Industry health and safety representative
Inertisation	Removing the hazards of combustion in a coal mine by sealing a mine or district of a mine and by introducing a non-combustible atmosphere, usually by forced ventilation
Inrush	An unplanned or uncontrolled flood of liquid, gas or material that has the potential to create a hazard
Irrespirate/irrespirable	Refers to air that is unfit for breathing and cannot support life
Metalliferous	A mineral or other material, other than coal
Mine operator	The legal entity responsible for the mining operation
Mine worker	A natural person working in a mining operation, including employees, contractors, subcontractors, the employees of contractors and subcontractors, and labour hire workers
Mining operation	The mines, tunnels and quarries that are covered by the mining regulations
MITO	NZ Motor Industry Training Organisation Inc

MRS	Mines Rescue Service
MRT	Mines Rescue Trust
MRT Act	Mines Rescue Trust Act 1992
NZQA	New Zealand Qualifications Authority
Opencut	The Australian term for "opencast"
Opencast	A surface mine
Outcome requirements	Minimum standards that must be met to achieve health and safety outcomes
PCP	Principal control plan
Principal hazard	A workplace hazard with the potential to cause multiple fatalities in a single incident or fatalities in a series of recurring incidents
PHMP	Principal hazard management plan
Queensland Act	Queensland's Coal Mining Safety and Health Act 1999
Safety critical roles	The positions held by employees or contractors at mining operations that contribute to health and safety and that are prescribed in the mining regulations. These include site senior executive, mine manager, and ventilation officer.
Scope	The types of mining operation that are covered by the mining regulations are "in scope". Mining operations that are not covered are "out of scope".
Self rescue	Where mine workers are able to escape by their own efforts without the assistance of emergency responders
SOP	Standard operating procedure: a documented way of working, or an arrangement of facilities, at the mine
SSE	Site senior executive – the representative of the mine operator who is responsible for the maintenance of health and safety management systems, ensuring worker participation, and is the point of contact with the regulator
Strata	Rock in all possible forms, from a high strength material to an extremely weathered, very low strength, essentially soil like material
Strata management or control	The methods used to manage the risks associated with strata instability in mines
TARP	Trigger action response plan
Void	Area of a mine remaining when the mineral or metal has been extracted
Winding operation	The raising or lowering of a conveyance in a shaft
Worker participation	The ways that workers can get involved in the health and safety of their workplace
Worker participation system	See "worker participation"

Submission form
Safe mines: safe workers

These questions are prompts only, designed to help you focus your response. You don't have to answer every question and you are welcome to provide additional comments.

We've also asked you for a few personal details, which will help us analyse the submissions. You don't have to provide any information you don't want to.

See "How to have your say" on page six of the discussion document for ways to complete and send in this submission. The deadline for all submissions is 1 July 2013.

The Ministry intends to post all written submissions on the website at www.mbie.govt.nz, except for any material that may be defamatory. Please tick if either of these apply:

☐ I do not give permission for my name to be listed in any published summary of submissions

☐ I do not give permission for my submission to be published online

Your submission may also be requested under the Official Information Act 1982. If you object to part or all of your submission being made available, the Ministry will take this into account when responding to requests under this Act.

☐ I would like these parts of my submission to be withheld and for these reasons:

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_____

_____

_____

CONTACT DETAILS

Name:

Address:

Email:

Organisation (if applicable):

Position (if applicable):

I am making this submission:

☐ As an individual

☐ On behalf of a group or organisation (please specify)

☐ Other (please specify)

My background or interest area is/I represent the following industry sector (please supply more details as appropriate. You can select more than one category.):

☐ Member of the public (note any special interest area)

☐ Mine worker

☐ Pike River family member

☐ Member of a mining community

☐ Mine manager or operator

☐ Mining contractor

☐ Quarry operator

☐ Tunnelling operator

☐ Union or union representative – mining

☐ Union or union representative – other industry

☐ Mining association

☐ International mining industry (please specify country and specialist area)

☐ Employer association

☐ Industry training organisation

☐ Other non-government agency (please specify)

☐ Other high hazard industry (e.g. agriculture, forestry, petroleum and minerals, fishing, construction, manufacturing) and your role (where appropriate)

☐ Other (please specify)

Broadening the Royal Commission's recommendations: what we propose

- The new regulatory regime covers the mining industry generally, not just underground coal mines.

1. Do you agree with the proposed coverage of the mining industry? What changes would you suggest, and why?

2. In particular, do you agree with the proposed features for tunnels and quarries that would be covered by the new regulatory framework? What changes would you suggest, and why?

3. In making your submission on the proposals in this chapter you may wish to refer to the proposed definitions for mining operation, tunnel, quarry, and mine worker, which are set out in technical appendix four (located in volume 2).

A new regulatory approach: what we propose

- A new set of regulations for the mining industry
- Processes for managing hazards, and necessary controls, will be set out in regulation
- All mining operations must have formal health and safety management systems
- New safety critical positions are established
- Increased involvement by the regulator
- A mining sector advisory group is established.

A new regulatory approach, with stronger hazard and risk management

4. Do you support the proposals to require principal hazard management plans and principal control plans?

5. Are the requirements for the preparation of principal hazard management plans and principal control plans clear enough to enable mine operators to prepare these plans? What changes would you suggest?

6. Have we focused on the right hazards? What changes would you make to the list of principal hazards?

7. Have we focused on the right controls to be subject to principal control plans?

8. Do you agree with the proposed strengthened minimum standards (set out in technical appendices two and three)? What changes would you suggest?

9. Do you agree with the proposed processes for managing principal hazards (set out in technical appendices two and three)? What changes would you suggest?

10. Do you agree with the new enforcement powers for mines inspectors?

11. Do you agree with the proposed transitional arrangements? Are there any transition issues that we have missed?

12. In making your submission you may wish to comment on the technical appendices for this chapter.

Safety critical roles for mining operations

13. Do you agree with the proposed functions and duties of the new and expanded safety critical roles? Why, why not? What would you change?

14. Is the role of a site senior executive (SSE) relative to that of mine manager clear and, if not how could we clarify this?

15. Should an SSE be able to be responsible for more than one mine site?

16. Do you agree with the proposal that, in certain circumstances, a person can hold more than one safety critical role? In particular, do you think it is appropriate that a mine manager also hold the role of SSE?

17. In making your submission you may wish to comment on the technical appendices for this chapter.

Establishing a mining sector advisory group

18. Do you support the establishment of a mining sector advisory group?

19. Do you agree with the proposed functions of the group? What changes do you suggest?

20. Do you agree with the proposed membership of the group? What changes do you suggest?

Training and qualifications: what we propose

- Competency requirements for all safety critical roles are set out in the mining regulations
- There are minimum training requirements for mine workers
- An independent board sets the standards and examines mine workers' competency
- Mine managers have formal training in risk management and health and safety

Competencies for safety critical roles in the mining industry

21. Do you agree with the proposed competencies for safety critical roles in the mining industry? If not, why not? What changes do you suggest?

22. What level of qualification should an SSE have and should this differ depending on the type of mining operation?

23. What should be the minimum training or competency requirement for mine workers?

24. How do you think the competence of existing workers should be assessed to ensure that they meet the new minimum requirements? What transitional arrangements should apply?

25. Should we introduce "human factors" into the competency requirements for safety critical and general management/supervisory roles in mining operations? If so, for which roles should this requirement be introduced?

26. We currently have separate certificates of competency for underground and opencast mines, tunnels and quarries, although some of these have the same or similar unit standards. Do you favour consolidating the certificates of competency where practicable?

27. Are the transitional phase-in provisions for the new competencies reasonable? Are there any transitional issues that we have missed?

28. In making a submission on this chapter we also welcome your feedback on the more detailed proposals in technical appendix seven.

A board of examiners providing greater regulatory oversight

29. Do you agree with the proposed functions for the board of examiners? Is there anything you would suggest that we do differently?

30. Should we work towards a joint New Zealand/Australia accreditation process, or have an independent New Zealand board of examiners that maintains close links with Australian counterparts?

31. Should the industry fund the board of examiners through the payment of a levy? If yes, should the levy be based on output or the size of the workforce? If not, how should the board be funded?

Worker participation: what we propose

- All mining operations must have documented worker participation systems
- All workers, including contractors, will be covered
- Results of health and safety monitoring to be provided to all mine workers
- Site health and safety representatives will have new powers
- Industry health and safety representatives are to be established

NB: The Bill making the necessary legislative changes regarding worker participation will need to be introduced to Parliament by the end of June, before this consultation is complete. Your submission on these proposals will still be taken into account before the Bill is finalised. You can also make a submission directly to the select committee.

32. Do you support the proposed approach for applying worker participation to contractors? Do any difficulties arise; for example, from the use of the "mine worker" concept?

33. Do you agree that we should replace the current approach for determining the functions of a site health and safety representative, which is for employers, employees and unions to negotiate these, and instead specify a list of functions? Should the parties be able to negotiate functions and powers in addition to those specified in the HSE Act.

34. Do you support the proposed mix of functions, powers and complementary provisions for site specific and industry wide health and safety representatives? What would you suggest we do differently?

35. Are the industry wide functions from the Queensland legislation appropriate? What other industry wide functions could the proposed industry health and safety representatives undertake?

36. Do we need to provide immunity from liability for site and industry health and safety representatives?

37. What level of training and qualifications do you think should be required for site health and safety representatives?

38. What level of training and qualifications do you think should be required for the industry health and safety representatives? Is the deputy's certificate an appropriate level of qualification for an industry health and safety representative for all types of mining operations?

39. What issues should be covered in a code of practice for worker participation? What sort of guidance on the documentation of worker participation systems would be useful?

Emergency management: what we propose

- Emergency management procedures and strengthened minimum standards are set out in the regulations
- New requirements for emergency equipment and facilities in underground mines
- All mines must have an emergency management plan
- The Mines Rescue Service has broader coverage and is better funded

NB: The Bill making the necessary legislative changes on issues such as the Mines Rescue Service will need to be introduced to Parliament by the end of June, before this consultation is complete. Your submission on these proposals will still be taken into account before the Bill is finalised. You can also make a submission directly to the select committee.

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40. Do you agree with the proposed emergency management processes for mining operations? What would you change?

41. Do you agree with the proposed minimum standards for the emergency equipment and facilities that must be present at underground mines? What would you change?

42. Do you agree with the proposed requirements for emergency management plans? What changes do you suggest?

43. Do you agree with the proposed changes to the MRT Act concerning functions, scope and levies of the MRS? What would you change?

44. Do you have any suggestions on how the levy that funds the MRS should be structured?

45. In making a submission you may wish to refer to the more detailed proposals concerning EMPs in technical appendices three and eight (in volume two).

Transitional arrangements: what we propose

- The new regulatory framework for mining will come into effect in December 2013, but there will be transitional arrangements to allow duty holders time to comply with the new requirements.

46. Are the transitional phase-in provisions for the new regulatory approach reasonable?

47. Are there any transitional issues that we have missed?