

Submission of

The New Zealand Mining Industry Safety Council (MinEx)

to the

**Health, Safety and Compensation Frameworks Policy
Team, Ministry of Business, Innovation and Employment**

Developing regulations to support the new Health and Safety at Work Act

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INTRODUCTION

1. The New Zealand Mining Industry Health and Safety Council (MinEx¹) welcomes the opportunity to submit on the consultation document “Developing regulations to support the new Health and Safety at Work Act”. The extended deadline of 1 August 2014 is noted and thank you for the extra days allowed to consult with our industry sectors resulting in a further extension to 8 August.
2. The New Zealand mining and quarrying industry has been actively involved in the Government’s health and safety reforms, following the Pike River tragedy, through the Coal Association, Straterra, MinEx, the Aggregate and Quarry Association (AQA) and other organisations. That work included: submitting to the Pike River Royal Commission; input into the 2013 amendments to the Health and Safety in Employment Act 1992; providing expert input into the development of the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013, as well as Codes of Practice and related work; the amendments to the Mines Rescue Trust and Service; and changes to mining and quarrying health and safety competencies, qualifications and training. MinEx is continuing to co-ordinate, and provide expert input into ongoing work in the afore-mentioned areas.
3. Earlier this year, AQA and Straterra combined to develop a new revitalised MinEx properly funded to best serve the mining industry in improving health and safety performance. It upholds the Government’s targets for reducing the rates of fatalities and serious harm in workplaces in New Zealand.
4. The MinEx board consists of representatives from the Aggregates and Quarries Association (AQA), Straterra, the Institute of Quarrying NZ (IOQ), the EPMU, the Contractors Federation and the NZ branch of the Australasian Institute of Mining and Metallurgy (AusIMM). The MinEx membership list of 91 members is appended to this submission.
5. In preparing this submission, MinEx has consulted with AQA and the IOQ who fully support the submission. AQA and IOQ themselves sought submissions from their members and these have been incorporated into this submission. The submission has been supplied to the EPMU and the Contractor’s Federation.
6. MinEx submits on this Bill from the point of view that New Zealand needs to improve its performance on workplace safety, and that businesses should be appropriately enabled and regulated to achieve that objective.

¹ MinEx is a national Health & Safety Council for the New Zealand minerals industry. Its main purpose is to help industry to improve its health and safety performance, and to provide centralised industry representation on matters relating to health and safety.

7. As is the case with any legislative reform proposal, the risk arises of unintended consequences for businesses, workers, and other stakeholders. The MinEx submission focuses on this aspect, to promote a fair, reasonable, effective and workable regime.
8. We wish to appear before the select committee.

EXECUTIVE SUMMARY

MinEx supports the use of the Australian Model Regulations as a base for the development of NZ regulations to support the Bill. We note that, apart from the Quarry and Alluvial sectors of the mining industry, we are already working under regulations very similar to those proposed.

Given the similarities between the surface mining sectors already working to similar regulations and those that are not, we see minimal impact from the proposed regulations on the quarry and alluvial sectors of the mining industry.

Chapter 1 - Overview

We note the report's comment on the normal process followed when introducing legislation and the fact that these regulations are being developed in parallel with the passage of the Bill through Parliament. While we support the need to make changes to the regulatory regime around health and safety, this situation has reduced our ability to see the detail in the regulation. With the regulations, the devil will always be in the detail. There needs to be a process whereby we can review and submit on the actual regulations.

MinEx supports the Government's target on fatality and injury reduction. However, bad law written quickly will not necessarily meet these goals.

MinEx absolutely supports the drivers for change as contained in the consultation document.

Question 1. Do you have any comment to offer on the proposed approach to phasing the development of regulations?

MinEx fully supports the proposed phase one work.

It is proposed that the Quarry sector of the mining industry have any regulations required developed during phase two and we support this approach subject to the rider below. We do however note that the two sectors that were excluded from the Dec 2013 amendments to the Health and Safety in Employment Act 1992 and associated regulations were the Quarry and Alluvial Gold sectors and so both sectors should be covered by the phase two work.

Question 2. As a duty holder, do you rely on commercially-printed hard copies of regulations purchased either from Legislation Direct or selected retail outlets? Or, do you view or print off your own copies of regulations from the NZ Legislation website as needed?

We rely on regulations, standards and guidelines downloaded from websites.

MinEx favours a set of regulations specific to the mining industry. We also favour the use of downloadable documents in a format suitable for use in internal documents (cut and paste capability).

Question 3. What do you think are the relative benefits and drawbacks of either: having a single set of Health and Safety at Work regulations containing all regulatory requirements in one place; or having multiple sets of regulations each focusing on a single topic (some of which will apply to everyone, and others which will only apply to a select group of duty holders)?

We think that an industry specific set of regulations would be preferable for the mining industry and others. It is WorkSafe practice, when developing codes, to produce a single document which contains all of the regulations as well as the codes and guidance that support the regulations. This means that a duty holder is able to use a single document to access all of the information required for compliance. If this continues, and we think it is an excellent way to present code and guidance material, then the industry specific format is the best way to go.

Question 4. Do you have any comment to offer on the proposed approach to identifying regulatory offences?

No comment

Question 5. Do you have any comment to offer on the principles for identifying which requirements of the new regulations should be infringement offences?

No comment

Question 6. Are there any proposed requirements in the regulations that you think should be infringement offences? Which ones, and why?

No comment

Question 7. Do you think any of the new regulations will need an extended period of time to allow duty holders to comply (i.e. beyond when the proposed new Act and regulations first come into effect)? Which ones, and why?

There will undoubtedly be matters that require time and money to ensure compliance but it is very difficult at this point in time and without the detail of the regulations to be specific about which regulations will require additional time for each industry and each site.

Question 8. Are there any other transitional issues that you think should be considered? Please explain.

Perhaps, transitional issues need to be dealt with by way of time-limited exemptions.

Chapter 2 - General risk and workplace management

We agree with the adoption of regulations 32 to 38 of the Australian Model Regulations as an improvement on the current management of risk in the NZ context.

Question 9. Do you have any comment to offer on the regulatory proposal about the process for managing specified risks to health and safety in the workplace? Specifically, do you have any comment on the Australian requirements for reviewing control measures, and which of them may be appropriate here?

We agree with the intention to adopt regulations 32 to 38 inclusive of the Australian Model Legislation as these are clear and an improvement over the current hierarchy of controls. We agree that only high-risk situations or activities need have prescribed risk management

process and that well known risks are likely to have well established and accepted control measures.

Question 10. What do you think are the main benefits and costs of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)

The main benefit will be to focus firstly on elimination. Too often, NZ companies shift to isolate and minimise without truly assessing elimination. The proposed hierarchy also makes it clear that there is also a hierarchy within minimisation. Overall, the proposal should lead to better outcomes. Most sectors and companies in our industry already adopt a risk approach to safety management, and so for these companies there will be little cost impact. These are those sectors of our industry that are covered by the Health and Safety in Employment Mining Operations and Quarrying Operations Regulations 2013 (the 2013 regulations).

For those not adopting this approach or not covered by these regulations (Quarry and Alluvial sectors), there will be some cost in completing the required risk appraisal, risk assessments and control plans to a higher standard. It is difficult to be precise with these costs but they could amount to \$10,000 to \$20,000 per company depending on how advanced their current safety management system is and how closely it conforms to what may be required by the proposed regulations.

Question 11. Do you have any comment to offer on the regulatory proposal about the provision of information, training, supervision and instruction?

The proposed change will be beneficial but essentially reflects the status quo for the mining industry for those sectors covered by the 2013 regulations. These regulations have specific requirements for training embedded within each of the regulations covering principal hazard management and principal control plans.

Question 12. Do you have any comments about the proposed regulations for general workplace facilities?

We agree with the concept of separating out the facilities as suggested on Page 38. Again, those sectors of the mining industry covered by the 2013 regulations are already required to address these issues.

Question 13. Do you envisage any impacts (positive or negative) as a result of not specifically mentioning things such as controlling humidity and air velocity, over-crowding, and accommodation for agricultural workers in the proposed regulations?

No comment

Question 14. Do you have any comment about the regulatory proposal for the provision of first aid facilities? Does the proposal differ greatly from how you are interpreting the current requirements? Please explain.

Including regulation similar to the Australian regulation 42 is supported. Within the mining sector most companies would interpret this as being required now. Those sectors covered by the 2013 regulations are certainly required explicitly to include first aid matters in their emergency management plan under Part 4.

Question 15. Should some businesses not be subject to the requirement to develop, maintain and implement an emergency plan? If so, on what basis (e.g. business size/number or location of workers/risk type) and why?

We do not believe any company should be exempt from the need to have in place an emergency management plan regardless of size or complexity.

Question 16. Do you have any other comments to make about the regulatory proposal for emergency plans?

The mining industry is already regulated in this regard, apart from the Quarry and Alluvial sectors. Most of the Quarry and Alluvial operations will already have emergency management plans in place although not all will contain the detail required under the 2013 regulations.

Question 17. Do you see any issues with including protective clothing within the definition of PPE as in the Australian model regulations?

We see no issues with providing detail on PPE in regulation. It will clarify what is required.

Question 18. Do you think the proposed requirements on PCBUs for the provision and use of PPE, based on the Australian model regulations, are clear and detailed enough? Please give reasons.

We see no issues with applying the Australian Model Regulations 44 to 47 regarding PPE. They certainly clarify the situation and also place the desired duty on employees regarding PPE. Also they are risk based and the risk assessment process is the proper place to determine what PPE is required rather than a blanket approach. Employees need to understand why the PPE is required and how it will protect them and the proposal makes this more likely than is the case currently.

Question 19. Do you agree with the proposed amendment to the Australian model regulations about PPE needing to be compatible with other required PPE? What is the impact of incompatible PPE in your area of work? Please give examples.

We agree with the need for compatibility with respect to PPE. Incompatible PPE will lead to employees not using one or other of the PPE correctly or at all. Examples are air quality devices being incompatible with safety helmets, or ear protection being incompatible with safety helmets.

Question 20. Do you think it is necessary to continue the current provisions enabling a worker to genuinely and voluntarily choose to provide their own personal protective clothing so long as this does not compromise their safety? Do you agree to broaden this out to include all PPE? Please give reasons.

We do not agree with allowing a worker to supply their own PPE as it can lead to differing standards in PPE used. We think that the employer has the responsibility to supply all PPE to the required standard determined from the risk assessment, and that the best way to ensure all employees have PPE that meets the needs of the work is for the employer to supply the PPE.

Question 21. Do you agree to continue the absolute nature of the requirement on PCBUs to provide PPE to workers and other people in the workplace, and ensure it is used/worn? What are the positive/negative impacts of this? Please give your reasons.

We agree with the absolute need for PCBUs to provide PPE to workers and for workers to use PPE. If the risk assessment determines certain PPE is required then it must be supplied and used otherwise workers will not be adequately protected. We do not think it is

acceptable to allow a worker to opt out of using the right PPE because this exposes the worker to harm and the employer to prosecution.

Question 22. Do you agree to maintain the absolute nature of the provisions on workers and other people in the workplace to use/wear PPE? What are the positive/negative impacts of this? Please give your reasons.

As for question 21.

Question 23. Are there any other amendments that you think should be made to the new regulations relating to PPE? Please give your reasons.

None

Question 24. Do you support the proposal to introduce a specific requirement on PCBUs to manage risk to the health and safety of workers doing remote or isolated work? Do you think this requirement is necessary in the New Zealand context based on the meaning of remote and isolated work? Do you have examples of this kind of work in New Zealand? Please give reasons.

Isolation from other workers and access to assistance in an emergency should be identified during the risk appraisal and is a real issue in the mining industry. The 2013 regulations (reg 224) already provide for this issue. We would support the general introduction of this concept.

Question 25. Are there any other amendments that you think should be made to the new regulations relating to remote or isolated work? Please give your reasons.

None

Question 26. Do you have any comments to make in relation to the regulatory proposal for managing risks from airborne contaminants? Particularly, what do you think is a reasonable timeframe for keeping records of air monitoring?

Again, those sectors of our industry covered by the 2013 regulations already have regulations around airborne contaminants which are a real hazard in underground environments. We support the introduction of similar requirements to general industry. The 30-year time frame seems excessive but there is another issue here and that is when companies cease to trade the records are lost. The only way to guarantee that records are retained for the required period is for them to be kept by a government agency.

Question 27. Do you think the proposed regulation for managing risks from airborne contaminants will impose any additional costs on PCBUs? Conversely, what are the benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)

There will be costs associated with monitoring airborne contaminants but if they pose a hazard to health then they need to be monitored. The 2013 regulations already place a duty on companies to monitor health.

Question 28. Do you have any comments in relation to the regulatory proposals for managing risks associated with hazardous atmospheres?

The underground mining industry is accustomed to regulations around managing hazardous atmospheres and supports the extension to other industries.

Question 29. Do you think the proposed regulation for managing risks associated with hazardous atmospheres will impose any additional costs on PCBU's? Conversely, what are the benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)

This will impose costs on industries but if the atmosphere is genuinely hazardous then it must be monitored and managed.

Question 30. Do you think New Zealand should define an atmosphere as hazardous: if the concentration of flammable gas, vapour, mist or fumes exceeds 5% of the substance's lower explosive limit (the Australian model approach), or based on the concentration of flammable gas, vapour, mist or fumes as classified by AS/NZS 60079.1.10: 2009, or other such standards? Please give reasons, noting positive or negative effects.

We have no particular preference for defining hazardous atmospheres in other industries since the underground sector already has definitions via regulation and codes.

Question 31. Do you have any comment to make in relation to the regulatory proposal about the storage of flammable substances at the workplace?

None

Question 32. Do you think the proposed regulation for the storage of flammable substances at the workplace will impose any additional costs on PCBU's? Conversely, what are the benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)

No, because they should already be managing storage.

Question 33. Do you have any comment on the regulatory proposal about managing the risk of falling objects?

The Australian regulations 54 and 55 seem to be adequate.

Question 34. Do you have any comment on the regulatory proposal about managing risks associated with hazardous containers and loose but enclosed materials?

None to make.

Question 35. Do you have any comment on the regulatory proposal about carrying over the current provisions for young persons?

None

Question 36. How do you think regulation 61 of the current regulations relating to the use of tractors for agricultural work by 12 year olds should be transferred to the new regulations? Do you think that this exception should be removed? Please give your reasons.

No comment

Question 37. Do you think there should be a provision in the new regulations prohibiting people younger than 15 years of age from working in an area where hazardous substances are manufactured, handled or sold? Please give your reasons.

Yes, young people under 15 years of age should be prohibited from using hazardous substances in the workplace since they lack the experience and judgment to exercise proper care in the situations that might arise if something goes wrong.

Question 38. Do you have any comment to offer on the regulatory proposal about limited child care providers?

None

Chapter 3 - Regulating work participation, engagement and representation

Question 39. Do you have any comments on the proposed procedure for determining or varying work groups where there is one PCBU?

Again most of the mining industry already has regulation for work participation though the 2013 regulations. We support the extension of the concept to other sectors of our industry. The proposed procedure for determining work groups seems sensible.

Question 40. Do you have any comments on the proposed process for determining work groups where there are multiple PCBUs?

The process proposed for multiple workgroups also seems sensible.

Question 41. Do you have any comments on the proposed eligibility criteria for a Health and Safety representative?

These criteria are already imposed via the 2013 regulations and seem sensible for those sectors of our industry not covered.

Question 42. Do you have any comments on the regulatory proposals for the election process for health and safety representatives?

The proposal seems sensible.

Question 43. Do you have any comments on the regulatory proposal about the term of office of three years?

No comments on the term of office.

Question 44. Existing trained Health and Safety representatives are able to issue hazard notices – what additional training do you think is required in order for these Health and Safety representatives to issue PINs and direct unsafe work to cease, if any? Please give your reasons.

For health and safety representatives to be able to issue PINs and direct that unsafe work cease, they would need extra training in hazard ID, risk assessment plus any other health and safety management training supervisors receive to ensure that had the same level of training expected of the supervisor who would also be expected to exercise similar judgement.

Question 45. What essential content needs to be covered in training for Health and Safety representatives to have enough knowledge to effectively carry out their functions and powers? Please give your reasons.

Same as question 44.

Question 46. How do you think Health and Safety representative training should be delivered, for example online or face-to-face? Please give your reasons.

Suitably qualified and experienced trainers who are familiar with, and understand the particular communities of practice must be engaged to facilitate the required learning. These trainers will need to employ a range of training practices and strategies to ensure that the learning is efficient, effective and transferable. Training must include a significant face to face component preferably with a large workplace component. Experts will tell you that this is the best way to train for this type of skill. People don't learn safe behaviour in classrooms; they learn it in the workplace.

Question 47. What level of experience and qualifications must the training organisation have in order to provide training for Health and Safety representatives? Please give your reasons.

The training organisation needs to have experience in the industry in which the person will operate. See answer 46. While the unit standards may be generic, the training delivery should be via the relevant ITO. The ITOs set standards and organise training supplied mainly by private training enterprises, some workplaces and Polytechnics.

Question 48. What assessment should Health and Safety representatives have to undergo, if any, as part of their training to be able to exercise their powers and functions under the proposed new Act?

They should be required to pass unit standards in selected subjects and with a bias to onsite assessment. See answer 46. They should have a sound understanding of the regulations and expectations of both the regulator and the industry in which they practice. They should be able to apply and interpret those regulations and expectations in a range of predictable work place scenarios.

Question 49. Do you have any comments on the proposed process for Health and Safety representatives to access training and the PCBUs obligations for training?

These seem sensible.

Question 50. Do you have any comments on the proposed reasons for someone to cease being a Health and Safety representative or the process for workers to remove a Health and Safety representative from office?

These seem sensible and are contained in the 2013 regulations.

Question 51. Do you have any other comments on the regulatory proposals for Health and Safety representatives?

None.

Question 52. Do you think PCBUs must be required to appoint at least one person to the Health and Safety committee who has delegated authority to make decisions on health and safety matters? Please give your reasons.

Yes, as this will make the process more efficient. Many issues may be able to be resolved by a decision at meetings, thus saving time.

Question 53. Do you have any comments on the proposed regulations regarding Health and Safety committees?

These provisions seem sensible.

Question 54. Do you have any comments on the proposed situations where an inspector may make a final decision about a matter? Please give your reasons.

We agree that it is sensible to allow the inspector to make a decision.

Question 55. Do you have any further comments that you would like to make on the regulating of worker participation?

None.

Chapter 4 - Regulating work involving asbestos

The mining industry does not often encounter asbestos except in older buildings and hence we have not made much comment on these matters.

Question 56. Is the approach of a general prohibition with exceptions the best means of restricting work with asbestos in New Zealand workplaces? Do you consider it would be more effective than the current New Zealand system? What would be the implications of this approach for people that current deal with asbestos?

We agree with this approach. Asbestos is not often uncovered in the mining industry and so we have no further comment here.

Question 57. Is the definition of “work involving asbestos” comprehensive and consistent with the definition in the current regulations?

No comment

Question 58. Is the list of exempt activities contained in the Australian model regulations appropriate for New Zealand?

Yes

Question 59. Is there a date from which it can be assumed that asbestos is not present in workplaces and from which plant or structures installed after that date could be exempted from the regulations?

No as a recent issue with NZ Rail locos showed. Asbestos can be introduced unknowingly from other countries.

Question 60. What are the foreseeable situations where WorkSafe NZ could approve “methods adopted for managing risk associated with asbestos”?

Question 61. Do you support the imposition of a broad duty on all PCBUs at a workplace to eliminate the exposure of persons at the workplace to asbestos, and where this is not reasonably

practicable to not exceed a workplace exposure standard? What would be the practical effect of introducing this duty?

- Question 62.** Should the same standard be adopted for chrysotile (white asbestos) as for crocidolite and actinolite and the exposure standard brought into line with those of the Australian and United Kingdom jurisdictions?
- Question 63.** Should the exposure standard be specified in the new regulations themselves, or in an approved code or other instrument?
- Question 64.** Should the distinction between friable and non-friable asbestos in the current regulations be removed and the Australian approach of requiring the same processes for all asbestos or asbestos-containing materials be adopted for New Zealand?
- Question 65.** How should the new regulations define a “competent person” to determine/assess whether or not asbestos or asbestos-containing material is present in a workplace?
- Question 66.** Should an asbestos register, or statement of the non-existence of asbestos, be required for every workplace or potential workplace (including residential properties under the management or control of PCBUs) in New Zealand? What is the burden of compliance likely to be, and is the compliance burden justified?
- Question 67.** Is a workplace asbestos register best addressed for all types of workplaces under health and safety regulations, or would some, such as residential premises, be better addressed through another regulatory regime, such as under the Building Act 2004?
- Question 68.** Should the new regulations contain a requirement for a written Asbestos Management Plan in all cases? Are there some workplaces that could be dealt with by specific regulatory requirements or “rules” for types of work involving asbestos?
- Question 69.** Is there additional guidance that New Zealand workplaces would need to develop their asbestos management plans that is not available from Australia, or are there significant differences in terms of risk or practices that should be considered in developing the new regulations?
- Question 70.** Is the process for the management of asbestos and associated risks set out in part 8.4 of the Australian model regulations as described above appropriate in a New Zealand context?
- Question 71.** What level of accreditation is required for New Zealand laboratories, and what expertise and infrastructure would need to be in place to support an appropriate level of accreditation? Does this currently exist?

No comment on the questions above

- Question 72.** New Zealand has limited naturally-occurring asbestos deposits. Are provisions concerning such deposits necessary in the new regulations?

The mining of such deposits would introduce a significant hazard under the 2013 regulations and would need to be dealt with by an appropriate control plan. In the absence of guidance in NZ, Australian best practice would apply so we do not see the need for such regulations.

- Question 73.** Are the proposed health monitoring requirements for workers carrying out asbestos removal work or asbestos related work adequate? What changes, if any, will be needed to implement them in New Zealand?

- Question 74.** Are the proposed training requirements for workers carrying out asbestos removal work or asbestos related work adequate? What institutional and other resources, if any, will be needed to implement them in New Zealand?
- Question 75.** Is the proposed prohibition on the use of high pressure water sprays or compressed air equipment on asbestos or asbestos-containing material, and the requirement for controls on power tools, brooms and other implements used on asbestos appropriate? Do the new provisions reflect New Zealand practice?
- Question 76.** Should the new regulations prescribe a mandatory process to identify and manage asbestos hazards in the demolition and refurbishment of all structures and plant? Is the process in the Australian model regulations and effective way of identifying and managing the risk? How much would this differ from current New Zealand practice?
- Question 77.** Should the duty to identify and remove asbestos in workplaces that are residential premises rest with the PCBU that has been commissioned to do the work?
- Question 78.** In the absence of a date where asbestos and asbestos-containing material were banned from importation and use in New Zealand, is there a date after which structures or plant were built or installed from which they should be exempt from the process requirements?
- Question 79.** Are the requirements for asbestos removal set out in part 8.7 appropriate for New Zealand? And what new capacity or infrastructure would be needed to support them?
- Question 80.** Does the 10 square metre exemption create an appropriate threshold for the use of a licensed asbestos removalist? If not, is there an alternative means of exempting small-scale or “de minimis” asbestos removal work? If it is, are there ways of ensuring the exemption is not exceeded?
- Question 81.** What information should be provided to regulator on notification of asbestos removal work?
- Question 82.** What level of ITO or other training should be required for asbestos removal license holders and removal workers for the two classes of licensed asbestos removal work?
- Question 83.** Should there be a link between licensing and the appropriate disposal of asbestos waste?
- Question 84.** Is there currently the industry capability to provide for licensed asbestos removalists?
- Question 85.** Is it appropriate that businesses, as distinct from individuals, are licensed?
- Question 86.** Should there be a requirement to have an asbestos removal supervisor always present during class A work and available for class B work?
- Question 87.** What level of qualification is appropriate for licensed asbestos assessors?
- Question 88.** How should a PCBU be able to determine if asbestos is being assessed by a “competent person”?
- Question 89.** Should a clearance certificate be required in all cases of asbestos removal, or is there scope for the issuing of exemptions?
- Question 90.** What would the expected demand be for independent licensed assessors to meet these requirements? And what will be necessary for the regulator and asbestos removal industry to meet this demand?

- Question 91.** Does the membrane filter method provide the best means of air monitoring for class A asbestos removal work?
- Question 92.** Are the thresholds of 10 percent and 20 percent of the workplace exposure standards for asbestos dust appropriate for the investigation and review and ceasing of class A asbestos removal work respectively?
- Question 93.** Should class A asbestos removal work apply to the removal of all occurrences of friable asbestos and asbestos-containing dusts above minimum quantities? Are there other situations in New Zealand workplaces or residential premises that it should apply to?
- Question 94.** Are the steps required for the removal of friable asbestos in the regulations appropriate in a New Zealand context? Having considered the materials in support of the Australian model regulations, what additional guidance or resources would be required in New Zealand?
- Question 95.** Is the list of asbestos-related work (as defined by the exemptions to the prohibition on work involving asbestos) comprehensive enough for New Zealand?
- Question 96.** Are the minimum standards for asbestos-related work contained in part 8.9 of the Australian model regulations suitable for the asbestos-related work carried out in New Zealand?
- Question 97.** Are the requirements and processes for the licensing of asbestos removalists suitable for the New Zealand industry and workplaces?
- Question 98.** Are the requirements and processes for the licensing of asbestos assessors suitable for the New Zealand industry and workplaces?
- Question 99.** Is there an agency, other than WorkSafe NZ, that is most suited to the maintenance of the licensing regime in New Zealand? Or should the regime be operated by the regulator?
- Question 100.** Would the asbestos removal industry and supporting infrastructure be able to meet the new requirements?
- Question 101.** What, if any, requirements are superfluous, or are missing from the licensing process?
- Question 102.** Are the qualifications and experience required for each category of licence in the Australian model regulations suitable for the New Zealand industry?
- Question 103.** Should any further terms be defined in the new regulations?

No comment on the questions above

Chapter 5 - REGULATING WORK INVOLVING HAZARDOUS SUBSTANCES

- Question 104.** Do you have any comments in relation to the regulatory proposal requiring a PCBU to prepare and maintain an inventory of hazardous substances?

No problems with this

- Question 105.** Given that this proposal seeks to codify existing good practice, do you think the proposed regulation, requiring a PCBU to prepare and maintain an inventory of hazardous substances, will impose any additional costs on PCBUs? Conversely, what do you think are the main

benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical).

I don't see how maintaining an inventory will add to cost. The existence of an inventory is essential in a fire situation to protect fire fighters.

Question 106. Do you have any comments in relation to the proposed regulations setting out processes and considerations for managing the risks to health and safety associated with using, handling, generating or storing a hazardous substance at a workplace?

No. We are comfortable with them, as they follow the concept of prescribing for principal hazards.

Question 107. Given that employers are currently required to manage significant hazards in accordance with sections 8 – 10 of the HSE Act, do you think that the proposed processes and considerations for managing the risks to health and safety associated with hazardous substances will impose any additional costs on PCBU's? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical).

We do not think that this will add to cost.

Question 108. Do you have any comment to make about the regulatory proposal to transfer the requirements of the Classes 1 to 5 Controls regulations and parts of the Dangerous Goods and Scheduled Toxic Substances transfer notice into the new regulations?

None

Question 109. Do you think there are any immediate improvements that should be made to the controls on class 1 to 5 substances that are being transferred into the new regulations before the review is carried out?

No comment

Question 110. Do you have any comment to make about the regulatory proposal to transfer the requirements of Schedules 4, 5 and 6 of the HSNO Fireworks, Safety Ammunition, and Other Explosives Transfer regulations into the new regulations?

Yes, because the mining industry uses significant quantities of explosives and this places explosive regulation in the same jurisdiction as the rest of mining, which should simplify matters.

Question 111. Do you think there are any immediate improvements that should be made to the controls on fireworks, safety ammunition, and other explosives that are being transferred into the new regulations before the review is carried out?

Question 112. Do you have any comment to make about the regulatory proposal to transfer regulations 7 – 10 and 29 and 30 of the HSNO Classes 6, 8 and 9 Controls regulations into the new regulations?

Question 113. Do you think there are any immediate improvements that should be made to the controls on class 6 and 8 substances that are being transferred into the new regulations before the review is carried out?

No comment on the questions above

Question 114. Do you think that workplaces storing classes 6.1A, 6.1B, and 6.1C (substances that are acutely toxic) and class 6.7A (substances that are known or presumed human carcinogens) should be required to establish a hazardous substance location and obtain a test certificate for that location?

Yes, given the dangers involved

Question 115. Do you have any comment to make about the regulatory proposal to transfer the requirements of Schedules 2 and 3 of the HSNO Fumigants transfer notice into the new regulations?

This seems a sensible move

Question 116. Do you think there are any immediate improvements that should be made to the controls on fumigants that are being transferred into the new regulations before the review is carried out?

No comment

Question 117. Do you have any comment to make about the regulatory proposal to require a PCBU to ensure that a hazardous substance used, handled or stored at the workplace is correctly labelled in accordance with the HSNO Identification regulations (8 to 30, 32 and 33) and the HSNO Emergency Management regulations (8 to 10)?

This seems a sensible requirement

Question 118. Do you think there are any other immediate improvements that should be made to workplace labelling requirements?

No comment

Question 119. Do you have any comments in relation to the proposed regulations requiring a PCBU to obtain and make available the current safety data sheet for a hazardous substance?

We assume that this is so workers are informed but would add a requirement that this be the case. Handing out a safety data sheet does not go far enough. Workers' understanding needs to be checked. Specific training by a trained person must be given to ensure the worker can read and understand both the SDS and TDS. Current practice suggests that workers know where to find the papers but often have not read them and they are not often kept at the point of use.

Question 120. Do you think the proposed regulations, requiring a PCBU to obtain and make available the current safety data sheet for a hazardous substance, will impose any additional costs on PCBUs? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical).

No additional costs as they need to do this now.

Question 121. Do you have any comment to make about the regulatory proposal to transfer the existing signage requirements set out in the HSNO Identification regulations (51 and 52), and Emergency Management regulations (42) into the new regulations and merge into a single obligation?

Seems sensible

- Question 122.** Do you think there are any immediate improvements that should be made to the signage requirements that are being transferred into the new regulations before the review is carried out?
- Question 123.** Do you have any comment to make about the regulatory proposal to transfer the requirements of the HSNO Compressed Gases regulations into the new regulations?
- Question 124.** Do you think there are any immediate improvements that should be made to the requirements for the design, manufacture, verification, testing, and filling of compressed gas containers that are being transferred into the new regulations before the review is carried out?
- Question 125.** Do you have any comment to make about the regulatory proposal to transfer the requirements of the HSNO Tank Wagons and Transportable Containers regulations into the new regulations?
- Question 126.** Do you think there are any immediate improvements that should be made to the requirements applying to tank wagons and transportable containers regulations that are being transferred into the new regulations before the review is carried out?
- Question 127.** Do you have any comment to make about the regulatory proposal to transfer Schedule 8 of the HSNO Dangerous Goods and Scheduled Toxic Substances transfer notice into the new regulations?
- Question 128.** Do you think there are any immediate improvements that should be made to the requirements applying to stationary container systems that are being transferred into the new regulations (before the review is carried out)?
- Question 129.** Do you have any comment to make about the regulatory proposal to transfer the HSNO Exempt Laboratories regulations into the new regulations?
- Question 130.** Do you think there are any immediate improvements that should be made to the requirements applying to laboratories that are being transferred into the new regulations before the review is carried out?
- Question 131.** Do you have any comment to make about the regulatory proposal to transfer the HSNO Tracking regulations (excluding regulation 4(2)) into the new regulations?
- Question 132.** Do you think there are any immediate improvements that should be made to the tracking requirements that are being transferred into the new regulations before the review is carried out?
- Question 133.** Do you have any comment to make about the regulatory proposal to transfer the existing emergency preparedness requirements set out in the HSNO Emergency Management regulations (21 – 41) into the new regulations?

No comment on the questions above

- Question 134.** Do you have any comment to make about the regulatory proposal that an emergency response plan, or any part of an emergency response plan, could be part of any other management documentation for an emergency whether — required by the general risk and workplace management regulations made under the proposed new Act; or required by some other Act; or undertaken by a PCBU for some other reason?

We are comfortable with this, as it is similar to requirements in the 2013 regulations.

Question 135. Do you have any comment to make about the regulatory proposal that an operator who is required to prepare an emergency plan for a major hazard facility in accordance with new regulations covering major hazard facilities would not be also required to prepare an emergency plan by the new regulations covering work involving hazardous substances?

It seems sensible to link the two.

Question 136. Do you have any comment to make about the regulatory proposal to require a PCBU to revise their emergency response plan, if the Fire Service makes a written recommendation about the content or effectiveness of the plan?

This also seems to be a sensible thing to do and we have a similar requirement with Mines Rescue.

Question 137. Do you think that we should retain the current prescriptive list of matters to be addressed in an emergency plan (as set out in regulations 29 and 30 of the HSNO Emergency Management regulations) or should we adopt the more flexible list of matters used in Australia (regulation 43 of the Australian model regulations)? Why/why not?

We would prefer adoption of the Australian regulation 43. It is difficult to write prescriptive regulations that are a one-size-fits-all. The way this regulation is written should be sufficient to ensure that all matters are covered in the plan.

Question 138. Do you think that we should retain the current prescriptive set of requirements in relation to fire extinguishers (as set out in regulations 21 – 24 of the HSNO Emergency Management regulations) or should we adopt the more performance-based requirements used in Australia (regulations 359 and 360 of the Australian model regulations)? Why/why not?

Adopt the Australian approach in accordance with the previous response

Question 139. Do you think there are any immediate improvements that should be made to the emergency preparedness requirements that are being transferred into the new regulations before the review is carried out?

No comment

Question 140. Do you have any comment to make about the regulatory proposal to revoke the existing approved handler requirements and replace with duties in relation to the provision of information, training, instruction, and supervision?

This seems a sensible change to us and means that the management of hazardous substances is consistent with the management of any principal/significant hazard by ensuring that all who use/store/transport are aware of the hazards and controls. We do, however, see some difficulties with very small organisations that will need to use outside trainers. For example, farming & horticulture organisations may consist of an owner-operator only.

Question 141. Do you think the proposal to revoke the existing approved handler requirements and replace with duties in relation to the provision of information, training, instruction, and supervision will impose any additional costs on PCBUs? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)

Yes, but only where organisations have been undertaking inadequate training.

Question 142. Do you have any comments in relation to the proposed regulation requiring a PCBU to carry out workplace exposure monitoring where it is necessary to determine the efficiency and effectiveness of measures introduced to control exposure to substances hazardous to health?

This seems a sensible requirement but again may be problematic for very small organisations. That might be a good thing in that they will look very hard at avoiding using these substances.

Question 143. Do you have any comments in relation to the proposed regulations for establishing health monitoring for any worker who may be exposed to a substance hazardous to health?

Seems a sensible requirement.

Question 144. Given that employers, in accordance with sections 10(2) of the HSE Act, are currently required to monitor an employee's exposure to significant hazards (i.e. substances hazardous to health) and, with informed consent, monitor the employee's health, do you think that the proposed regulations for carrying out workplace exposure monitoring and establishing health monitoring will impose any additional costs on PCBUs? (Please quantify any impacts identified and express in dollar terms to the extent practical)

It will add to costs but given the size of the occupational health problem the cost is small.

Chapter 6 - REGULATING MAJOR HAZARD FACILITIES

Question 145. Do you have any comment to make on the proposed definitions?

They seem sensible

Question 146. Do you have any comments on the types of facilities that are proposed in scope or are proposed to be out of scope?

It would seem sensible to check that explosives manufacturing plants located at mines are adequately covered by the regulations since there are such plants at Macraes and Stockton mines.

Question 147. Do you have any comments on the proposed notification process?

These seem sensible and the issues have been recognised

Question 148. Do you have any comments on the proposed review procedure?

No comment

Question 149. Do you have any comments on the proposed process for establishing the suitability of the facility operator or the proposed process for notification by new operators?

This seems a sensible provision

Question 150. Do you have any comments on the proposed threshold quantities for individual hazardous substances or categories of hazardous substances?

No comment

Question 151. Do you agree with the proposed threshold calculation? Why/why not?

No comment

Question 152. Do you have any comment(s) on the proposal to require operators to carry out a formal safety assessment for the operation of a major hazard facility?

Seems a sensible provision

Question 153. Do you have any comments on the proposal to require operators to establish and implement a safety management system for the operation of a major hazard facility?

Surely, this should be an essential requirement.

Question 154. Do you have any comments in relation to the matters that would need to be included in an emergency plan?

Nothing specific but there may be parallels with the 2013 mining regulations

Question 155. Do you have any comments in relation to the proposal that would require an operator to consult with the local council, when preparing an emergency plan, in relation to the off-site health and safety consequences of a major accident occurring?

Given the potential for any incident to spread outside the boundaries of the site, this is an essential requirement

Question 156. Do you have any comments in relation to the proposal that would require an operator to provide a copy of the emergency plan to every person identified in the plan as being responsible for executing it (or a specific part of it) and to every emergency service provider?

This is an essential requirement as is training workers in implementation of the plan.

Question 157. Do you have any comments in relation to the proposal that would require an operator to test their emergency plan at least every 12 months in order to demonstrate that every procedure or action in the plan is workable and effective?

The 2013 regulations already require mines to do this and this is an essential requirement

Question 158. Do you have any comments in relation to the proposal that would require an operator to test their emergency plan within 3 months of any change to the persons, procedures, or actions specified in the emergency plan in order to demonstrate that the changed persons can perform their functions under the plan and each changed procedure or action is workable and effective?

This is an essential requirement

Question 159. Do you have any comments on the proposal to require operators of proposed major hazard facilities to send a design notice to WorkSafe NZ after initial design for the facility has been completed and before making a final investment decision?

This is a sensible requirement and protects the potential operator from surprises that might in fact make the facility uneconomic.

Question 160. Do you have any comments in relation to the particulars that would need to be addressed by a design notice?

They seem sensible

Question 161. Do you have any comments on the proposal that would require the operator of a proposed facility to provide WorkSafe NZ with a completed safety case at least six months before commencing operations at the facility?

This approach seems sensible

Question 162. Do you have any comments on the safety case process including comments in relation to the information that a safety case should contain or the proposed safety case assessment process?

Question 163. Do you have any comments on the proposal that WorkSafe NZ would have power to withdraw acceptance of a safety case?

Question 164. What do you estimate to be the benefits of the proposal, in terms of avoided costs associated with a major accident? (Please quantify these impacts and express in dollar terms to the extent practical.)

No comment on the questions above.

Question 165. Do you have any comments in relation to the proposal to require operators to review and as necessary revise the safety assessment, emergency plan, safety management system, and safety case?

This is an essential part of managing change

Question 166. Do you have any comments on the proposal to require operators to provide the local community and the council (for the district in which the major hazard facility is located) with information about the facility, its operations, how the community would be notified if a major accident occurs, and what the community should do if a major accident occurs?

This seems an essential requirement, given the possibility of the emergency spreading beyond the site boundaries. Is this consistent with the requirements on large dams?

Question 167. Do you have any comments in relation to the proposal to require operators to notify WorkSafe NZ of dangerous incidents?

This seems a sensible requirement and one to which the mining industry is already subject.

Question 168. Do you have any comments on the proposal to require an operator to implement a safety role for the workers at a major hazard facility?

Seems a sensible requirement

Question 169. Do you have any comments on the proposal to require an operator to consult with workers at the facility in relation to the implementation of the workers' safety role at the facility?

This must be an essential requirement

Question 170. How should coordination between councils and WorkSafe NZ be encouraged in relation to potential major hazard facilities and developments in the vicinity of existing major hazard facilities?

No comment

MinEx Membership list as at July 2014 (91 members)

From AQA: (73 members)

A B Equipment Ltd
A B Lime
Atlas Quarries Ltd
Bellingham Quarries Ltd
Blackhead Quarries Ltd
Bradken Resources Pty Ltd
Brightwater Engineering
Byfords Construction Co Ltd
Christchurch Ready Mix Concrete Ltd
Digger School
Downer Edi Works Ltd
Envirofert Ltd
First Break Mining & Construction Ltd
Fulton Hogan Ltd
Goughs
Green Vision Recycling Ltd
Groeneveld New Zealand Ltd
H G Leach & Co Ltd
Hauraki District Council
Higgins Aggregates Ltd
Higgins Contractors Wairarapa
Holcim (New Zealand) Ltd
Holcim (NZ) Ltd Kiwi Point Quarry
Horokiwi Quarries Ltd
Huntly Quarries Ltd
Infracon Aggregates
J Swap Contractors Ltd
K B Contracting & Quarries Ltd
Lake Road Quarries
Liebherr Australia Pty Ltd
Longburn Shingle Company Ltd
Materials Processing Ltd
Maungaraki Lime Ltd
McCallum Bros Ltd
McGregor Concrete Ltd
Mike Edridge Contracting Ltd
MITO
Monovale Sand Quarry Ltd
NZ Steel
Oamaru Shingle Supplies Ltd
ORICA Mining Services
Origin Quarries Ltd
Perry Resources (2008) Ltd
Porritt Sand
Porter Group
Prenters Aggregates Ltd
Pukepoto Quarries Ltd
Quality Roding & Services (Wairoa) Ltd
Rangitikei Aggregates Ltd
Ravensdown Fertiliser Co-op
RealSteel
RedBull
River Run Products Ltd
Road Metals Co Ltd
Roding New Zealand
Rock Products Ltd
Rocktec Ltd
Sandvik Mining & Construction Ltd
Selwyn Quarries Ltd
Sibelco NZ Ltd
Southern Aggregates Ltd
Stevenson Resources Ltd
Taupo Scoria Ltd
Taylor's Contracting Co Ltd
The Isaac Construction Co Ltd
Total Lubricants/Oil Imports
Transdiesel Ltd
Tyreline Distributors Ltd
Victory Lime 2000 Ltd
Waiotahi Contractors Ltd
WaterCare Laboratory Services
Wharehine Ltd
Winstone Aggregates

From Straterra (5 members)

Kaipara Excavators
OceanaGold
Newmont
NZ Steel
Stevensons Mining

From CANZ (Coal Association of NZ) (13 members)

Birchfield Coal Mines Limited
Buller Coal Limited
Burkes Creek Coal
Francis Mining Co Ltd
Glencoal Energy Ltd
Harliwich Holdings Ltd
Kai Point Coal Co Ltd
New Creek Mining
Roa Mining Co Ltd
Solid Energy NZ Ltd
CRL Energy Ltd
Taylor Coal Ltd
Kenroll Industrial Coal (2011) Ltd