

Modernising Work Health and Safety Laws in Western Australia

Submission by the Australasian Institute of Mining and Metallurgy

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**DEPARTMENT OF MINES, INDUSTRY REGULATION AND
SAFETY**

**MODERNISING WORK HEALTH AND SAFETY LAWS IN
WA**

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About the AusIMM

The Australasian Institute of Mining and Metallurgy (the AusIMM) was formed in 1893 and is the leading organisation representing the 65,000 resources sector professionals in the Australasian region, across industry, government and academia.

Our members include professionals from traditional disciplines such as mining engineers, geoscientists and metallurgists, as well as from disciplines such as business management, finance, health and safety, social and environmental science.

With a focus on enhancing professional excellence, the AusIMM provides members with an ongoing program of professional development opportunities to ensure our members are supported throughout their careers to provide high quality professional input to industry and the community.

Summary

This submission has been provided in response to the Western Australian *Modernising Work Health and Safety Laws* consultation document and proposed recommendations. AusIMM welcomes the opportunity to provide feedback, which can be summarised into the following points:

- Mining work, health and safety standards in Australia are some of the best in the world and any generalization of legislation which has the possibility of diluting those standards is of concern to the AusIMM.
- The degree of digital disruption in the mining industry is fast outpacing the regulatory framework. It is the view of AusIMM that any legislation should address this unique environment in the resources sector to ensure that any regulatory framework does not stand in the way of innovation.
- Mining specific safety legislation is valued in the sector. The Royal Commission Report from the Pike River Coal Mine Disaster of 2010 specifically detailed the lack of mining-specific safety legislation by the regulator as an underlying cause of the tragedy where 29 individuals lost their lives¹. Mining-specific safety frameworks had been removed in the immediate time preceding this disaster. This has also been the case in other recent mining disasters. For this reason, mining specific

¹ Panckhurst, G., 2012, 'Royal Commission on the Pike River Coal Mine Tragedy', pg, 32 [http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-One/\\$file/ReportVol1-whole.pdf](http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-One/$file/ReportVol1-whole.pdf)

legislation is considered to be “written in blood” by the sector, and its necessity deemed evidence based. Any move towards modernisation into more general WHS legislation should address these concerns.

- Any inspections or regulatory oversight of the mining sector by government officials must include qualified mining health and safety professionals, to ensure the uniquely high level of standards are maintained, and not diluted.
- More should be done to address the capacity of digital platforms and the integration of government reporting systems to ensure the frictionless transfer of information and reporting in real time.
- The WA Government should note the changing modern nature of the mining industry, when assessing definitions for the scope of legislation and who and what it applies too. Remote operation is becoming more common and the interstate nature of activities needs to be incorporated effectively in to any legislation.

Submission

#	Recommendation	Clauses	Comments
1	Amend the Objects of the WHSAct (WA) to foster cooperation and consultation in the development of health and safety standards.	3(1)(c).	AusIMM supports this recommendation, believing that the degree of digital disruption in the mining industry is fast outpacing the regulatory framework. Active participation by all parties in consultation creates the freedom and encouragement to be innovative and create best practice in a changing landscape.
2	Amend the Objects of the WHS Act (WA) to make specific reference to Western Australia.	3(1)(h).	AusIMM supports.

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4	Establish roles of 'Chief Inspector of Mines' and 'Chief Inspector of Critical Risks' to enable duties under the Act and Regulations.	4.	AusIMM notes that these roles are imperative under a general Work Health and Safety Legislation, given the specific risks that require constant assessment and oversight in the sector, compared to more general workplace health and safety.
5	Amend the definition of import to include importation from another state or territory into Western Australia.	4.	AusIMM supports this recommendation reluctantly. Although AusIMM aims to promote the capability of professionals as a community with cohesive interstate relationships, AusIMM also understands that there is a significant way to go until codes and standards are unanimous across Australia to ensure the optimal standards are implemented in all states and territories. This is a necessary recommendation in the current climate. AusIMM has concerns around how this pertains to the future of remote operation, and how structures possibly operating remotely from interstate might be monitored under these changes.
7	Amend the meaning of person conducting business or undertaking to ensure only workers and officers who are 'natural persons' are excluded.	5(4).	A significant proportion of AusIMM members and professionals within the sector are both PCBU and "workers" by the current definition, which creates a confusion the expectation in duty of care. This includes the number of consultants and sole traders in the sector. AusIMM supports this recommendation
14	Ensure the PCBU's obligation to ensure a health and safety representative (HSR) attends approved training is a 'requirement' rather than an 'entitlement'.	72(1)(b).	AusIMM strongly supports the education of professionals in the areas of health and safety. For that reason, AusIMM strongly supports HSR training as a requirement, so that they can realise their potential confidently and accurately at work.

#	Recommendation	Clauses	Comments
17	Include the right to seek review of an issue arising out of the cessation of unsafe work by the Work Health and Safety Tribunal (WHST).	89, 229.	AusIMM acknowledges and encourages the evolving nature of the mining industry as innovations and digital transformation envelop the sector. AusIMM raises concerns regarding an external review based on increasingly outdated expectations of health and safety as the sector transforms. WA policy and health and safety regulations must be able to continuously catch up to the technology being implemented to ensure the regulatory framework doesn't stand in the way of innovation, when the innovation is leading to positive, safer outcomes. AusIMM requires clarity around what requirements any external review would assess health and safety standards against.
18	Add a requirement that a HSR is notified where a request to review a provisional improvement notice by an inspector is sought by a PCBU or person.	New clause to be added to section 100.	AusIMM supports this recommendation.
28	Include the power for the Regulator to request an independent evaluation consistent with current practice.	New clause to be added to Division 2, Part 8.	AusIMM only notable concern with this recommendation is clarity around the experience of any authority conducting an independent assessment. AusIMM strongly urges that there be strict requirements to ensure any independent assessment conducted in the resources industry, is done so by a professional specifically qualified in health and safety for the mining sector. General WHS assessors may not have the specific knowledge required for a comprehensive, accurate, mine site assessment or review.

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34	Remove the requirement that codes of practice cannot be approved, varied or revoked by the Minister without prior consultation with the Governments of the Commonwealth and each state and territory.	274(2)(b).	AusIMM supports this recommendation. Although AusIMM maintains the need for cohesive changes across Australia, AusIMM recognises the speed at which the resources sector is changing, and the capacity to continuously implement safer ways of operating under codes. Any legislative burden that slows this progress, stalls innovation in the industry.
37	Replace the Mining Industry Advisory Committee with the Mining and Critical Risk Advisory Committee (MACRAC)	Include a section establishing the MACRAC in Schedule 2.	AusIMM notes that legislation should not constrain the Critical Risk Advisory Committee to consultation with specific bodies. As the mining industry undergoes enormous changes with technological advancement, the nature of the workforce changes, as may the bodies that represent their interests. The WA Government should commit generally to broad consultation and representation, ensuring the most qualified individuals are participating in committees.
38	<i>Add your comments by creating new rows</i>		
	Use of Digital Platforms		AusIMM encourages the WA Government to build on the use the digital platforms being developed by industry to better integrate these with government systems. This would create frictionless transfer of data from mining companies to regulators and in return more automated transactions around tenement renewals, reporting, lease/permit approvals, regulatory oversight via real time visualization and automated audits, payment of rents, royalties and levies.