

# National Review into Model Occupational Health and Safety Laws

## National Mine Safety Framework Steering Group Submission to Issues Paper May 2008

### Addressing - CHAPTER 2: SCOPE, APPLICATION & DEFINITIONS

The National Mine Safety Framework (NMSF) Steering Group notes the following reference to the NMSF in the National Review into Model Occupational Health and Safety (OHS) Laws Issues Paper May 2008 (the Issues Paper):

A National Mine Safety Framework (NMSF) was established in 2006, which includes a set of legislative principles as the basis for achieving national consistency in relation to mining regulation. The principles and strategies under the NMSF have generally been consistent with approaches to OHS but have been developed separately from them. While the NMSF and a nationally harmonised OHS framework may each result in greater consistency across State and Territory boundaries for its area of operation, there is a risk of legislative inconsistencies between mining and other industries. This would be an issue for businesses operating in both sectors.

The set of legislative principles referred to in the above paragraph are called the NMSF Legislative Framework. In order to translate this Legislative Framework into legislative change that drives consistency between the jurisdictions, the Steering Group has agreed that drafting instructions should be prepared, which clearly explain the intent of each clause, and clearly defines the intended policy outcomes, and example clauses to assist with this legislative change. Michael Tooma from Deacons legal firm has prepared the first of these drafting instructions, which are to be considered by the Legislative Working Group at its meeting on 24 July 2008.

It is hoped that these drafting instructions will be largely agreed by Steering Group members by March-April 2009, depending on the issues encountered during drafting. We understand the Review Panel's recommendations regarding scope and coverage of a model OHS Act will be delivered to the Workplace Relations Ministers' Council by 30 January 2009. This timing will therefore allow the NMSF Steering Group to take into account the recommendations from the review when finalising the drafting instructions and, if necessary, make amendments to ensure consistency is maintained.

It is the Steering Group's view that the Legislative Framework and Drafting Instructions, developed by the NMSF Steering Group, should form the basis of any mining specific legislation or regulation to underpin general OHS legislation. However, it should be noted that these drafting instructions can be amended to address any areas of inconsistencies between them and the Model OHS Act. *Therefore, the NMSF Steering Group does not perceive a risk of legislative inconsistencies between mining and other industries.*

The NMSF process is flexible enough to ensure inconsistencies, should they arise, can be overcome. The NMSF Secretariat will continue to meet regularly with the Office of the Australian Safety and Compensation Council to ensure they are abreast of the direction of the Model OHS Review.

It is important to note, the Legislative Framework is only one of seven aspects on which the NMSF Steering Group is seeking to achieve national consistency in the mining industry. The Steering Group discussed this issue at its 27 June 2008 meeting, and noted that, whatever recommendations the review panel makes, the NMSF is still a valuable process. The other six NMSF strategies are still a solid basis upon which the Steering Group can continue working, and which aim to drive consistency in practice.

Furthermore, if there is to be industry specific regulation sitting under whatever structure the review panel recommends, the mining industry will be on the front foot – with the Legislative Framework and associated drafting instructions able to form the basis of this mining specific regulation. The Ministerial Council on Mineral and Petroleum Resources noted this relationship and was generally supportive at its 16 July 2008 meeting.

The NMSF Steering Group believes the Panel should also note the historical context for industry specific legislation in the mining industry. New equipment and methods have been introduced which change the risks and in many cases enable the risks to be better managed; however, the process of hazard identification, risk assessment, risk management, the provision of safety information (both technical and practical), instruction and training to ensure people are competent to operate equipment and to supervise and manage mining operations is still required. The aim of the NMSF is to put in place a consistent approach for this full range of safety issues, as stated in the seven strategies, without losing the provisions that remain relevant.

While different stakeholders have differing views on how the way industry specific legislation should be addressed, there is agreement that there are industry specific hazards that need to be addressed and considered, and industry specific concerns that should be taken into account by the Panel. A number of Steering Group stakeholders have provided individual submissions to the panel, which outlines their views on the appropriate legislative structure.


The other strategies of the NMSF include, most notably, compliance support and a consistently applied enforcement protocol, which may be of interest to the Panel in considering a nationally consistent approach to compliance policy and enforcement policy. The NMSF Steering Group is currently undertaking public consultations on the direction of these strategies. The NMSF Steering Group Chair would be happy to provide the Panel an update on the direction of these strategies in August 2008, following the public consultations currently underway.

Finally, the NMSF Steering Group believes the NMSF can add value to the national process – as an example of what can be achieved through an open, highly consultative process.

## **Background**

The NMSF is an initiative of the Ministerial Council on Mineral and Petroleum Resources (MCMPR). The seven strategies of the NMSF were initially developed by the Chief Inspectors of Mines, a subcommittee of the Ministerial Council consisting of the most senior technical officers with regulatory responsibility for mining operations in the States and Northern Territory (NT) of Australia, in 2000. It was endorsed by MCMPR in 2002, as a mechanism for delivering a nationally consistent mine health and safety regime across jurisdictions.

In November 2005, MCMPR re-endorsed the initiative with the establishment of a tripartite Steering Group (comprising State/NT and Australian Government officials, five industry



associations and three key trade unions) to guide the development and implementation of the Framework. The Hon Clive Brown, former Western Australian Minister for Trade and State Development, chairs the Steering Group. The Group met for the first time in July 2006.

The NMSF consists of seven key strategies, focussed on areas where consistency across jurisdictions would be most beneficial: a nationally consistent legislative framework, competency support, compliance support, a coordinated protocol on enforcement, consistent data collection and analysis, consultation mechanisms and a collaborative approach to research.

At its first meeting, the Steering Group decided to focus initially on three of the seven strategies: nationally consistent legislations, data collection and analysis, and consultation, and developed a Legislative Framework (**Attachment A**), National Data Set and Consultation Framework (**Attachment B**). These strategies were finalised following public consultations in June 2007, and provided to the MCMPR for consideration and endorsement in November 2007.

In November 2007, the Steering Group commenced work on the four remaining strategies (competency support, compliance support, enforcement and research). Public consultations are currently underway on these four strategies. The Steering Group will take into consideration the feedback received during the public consultations as it finalises the strategies, before making its final recommendations to MCMPR in October 2008.

**NATIONAL MINE SAFETY FRAMEWORK**

**LEGISLATION FRAMEWORK**

**Overarching Principles**

1. The National Mine Safety Framework (NMSF) identified that a nationally consistent legislative framework is essential for an efficient, effective and equitable regulatory system in each jurisdiction and across jurisdictions. The legislative framework shall include objectives that seek to foster continuous improvement. This does not mean that legislation should be identical, but rather that each jurisdiction should follow these overarching principles and key features. As a minimum, the legislation shall incorporate the intentions of the *International Labour Organisation Convention 176: Safety and Health in Mines* (ILO C176), and be aimed at making worksites in the Australian mining industry free from death, injury and disease.

*This clause summarises the central intent of the document, consistent with Strategy 1 of the National Mine Safety Framework (NMSF), which aims to deliver a nationally consistent legislative framework.*

*Despite the constant challenge of achieving a mining industry free from death, injury and disease in practice, it was agreed that this is the goal towards which the industry as a whole should strive.*

2. All parties, government and private, agree that mine safety and health legislation shall provide ways to regulate the safety and health practices at mines, ranging from those employing the most modern and sophisticated safety management practices and technology, to small mining operations operated by just a few people using basic equipment and methods.

*This clause is drafted to reflect that all mines, no matter what their scope or how complex, should be covered by these principles and key features.*

Overarching principles of a nationally consistent legislative framework shall include:

- a. legislative and regulatory framework that is clear and enforceable and requires all involved with mining operations to discharge their responsibility for health and safety;
- b. clear and specific legislative obligations on those involved in the mining industry including owners, employers, employees, contractors, and includes suppliers of goods or services, manufacturers, designers and importers, with the level of obligation being commensurate with the degree of responsibility or control held.

*The intention of this clause is to ensure the legislation applies broadly to those directly involved in or supply to the mining industry.*

- c. effective risk-based safety and health management systems, developed and implemented, that apply to all types of risk of personal harm, addressing all reasonably foreseeable hazards not just major accident events;
- d. a preventative approach supported by the identification and promotion of leading practice, sharing information and learning from experience.
- e. genuine consultative arrangements between management and mine employees which actively seek the representation of all in the development of safety and health policies and practices;

*It should be noted that 'Strategy 6-effective consultation mechanisms' of the NMSF details a proposed national approach to consultation in the workplace. This strategy is also available for public comment.*

- f. the ability of employees to collectively select safety and health representatives;
- g. all persons covered by the legislation be empowered to identify and report hazards without discrimination or retaliation;
- h. assessment, monitoring, auditing/validation and review of the safety and health management systems including emergency response procedures and comprehensive reporting against appropriate performance criteria;
- i. training, competence and relevant accreditation, of all employees appropriate to their duties;
- j. regulatory powers for investigation and reporting;
- k. application of graduated enforcement measures; and
- l. State/Territory regulatory authorities demonstrate independence, transparency and openness and have adequate competent and experienced skilled personnel;
- m. provision for a process for resolving issues.

## Key Features

### Objectives

3. The legislation shall clearly state its objectives and the ways in which these are to be achieved. These objectives shall include:
  - securing the health and safety of all persons at the mine site;
  - continuous improvement and effective implementation of safety and health systems;
  - focus on prevention;
  - identification and control of all hazards;
  - effective consultation.

*It is intended that the legislation shall broadly identify how these objectives are to be achieved – which will consist of a range of approaches incorporating a mix of principles, performance and process-based standards and, where necessary, prescription.*

### Glossary

4. A comprehensive glossary covering all major terms used in the legislation shall be included.

*A glossary shall ensure that the definitions of key terms of mining health and safety legislation across all jurisdictions are consistent.*

### Control and management of risk

5. The legislation shall encompass the principle that the management of safety and health shall be undertaken using risk management practices.

*It was agreed that an important process-based standard in the pursuit of safety is the requirement to undertake risk management practices. This approach encourages a holistic and systematic approach to managing OHS across the whole organisation, and aims to encourage an attitude of continuous improvement.*

6. All mining operations shall be conducted such that risks are managed using risk management practices so that residual risks are as low as reasonably practicable. The risk management process shall include hazard identification, risk analysis, risk reduction and risk monitoring. The hierarchy of hazard controls in the order of elimination, substitution, separation, engineering controls, administrative controls and personal protective equipment should be used.
7. Particular attention shall be given to core risks of the industry, ensuring that high consequence/low probability events are addressed.

## Obligations

8. The obligations of all persons covered by the legislation shall be clear and specific and, where practicable, indicate how those obligations shall be fulfilled.

*The responsibility of safety and health at a mine site does not rest with one person; everyone has a part to play. This 'principle-based standard' allows a person with obligations the flexibility to determine how they intend to meet their obligations within their specific circumstances. However, sometimes it is practicable that the legislation clearly identify how people should fulfil their obligations.*

9. Obligations shall extend to any person whose actions could affect the safety and health of those involved in the mining industry including owners, employers, employees, contractors, and includes suppliers of goods or services, manufacturers, designers and importers.

*This clause explicitly acknowledges that all people whose actions could affect the safety and health of persons at mine sites have obligations. Specifically, onsite and offsite personnel may include, but is not limited to, managers and board members that have control of or influence over safety at a mine site, but may not physically work at that mine site.*

10. The level of obligations imposed shall be commensurate with the degree of control, accountability and responsibility held.

*This clause explicitly acknowledges that while all involved have health and safety responsibilities, some positions/people have a greater degree of control over the health and safety at a mine site, and their obligations should therefore be appropriate to that degree of control, accountability and responsibility. I.e. responsibilities of some positions/people will be more onerous than others.*

## Management

11. The legislation shall specify such key positions which are considered necessary for the safe operation of the mine within the mine management and supervision structure and the functions, responsibilities and required competencies of persons in those positions.

*This clause recognises the importance of ensuring one or more positions or roles within the management structure have specified occupational safety and health functions, responsibilities and competencies. The legislation will specify the employer will allocate those positions or roles to one or more people within the management structure. The nature and form of the management structure will be determined by the employer.*

12. Whenever two or more employers undertake activities at the same mine, the employer in charge of the mine shall be primarily responsible for the safety and health of all persons at the mine site and coordinate the measures concerning the safety of the operations. This shall not relieve individual employers from responsibilities for the implementation of all measures concerning the safety and health of their workers.

*Everyone at a mine site has a part to play in the safe running of that mine site. However, this clause acknowledges that there needs to be someone who has overall health and safety responsibility at the mine to ensure a coordinated approach to the safety and health management.*

13. Where appropriate, specific obligations may need to be placed on key personnel supervising underground mining operations.

*This clause is included to acknowledge that underground mining has its own set of hazards and issues, some of which are different to other parts of the industry, and therefore the competency of underground mine management may be different.*

14. The obligations imposed in this section shall be commensurate with the degree of control accountability and responsibility held.

*This clause is included to clarify that - as required by clause 10 – the functions and responsibilities of these key personnel need to be tailored to the degree of control and accountability held.*

15. Arrangements may be required for the appointment of replacement personnel in the absence from duty of certain key personnel.

*This clause is included to ensure that there is always someone who has responsibility for the overall and key functions for health and safety at the mine. Specifically, in the event of an emergency, there are personnel that know what to do, and that appropriate procedures and reporting hierarchy is still in place.*

### **Safety management systems**

16. Legislation shall require the development and implementation of risk-based safety and health management systems that:
- form a documented and auditable system constituting part of the overall management system of the mine;
  - define the safety and health policy for the mine and cover such aspects as organisational structure and resources, responsibilities, policy and procedures for the operation of the mine, measuring, monitoring auditing and reviewing of processes and work practices;
  - define methods for developing, implementing, maintaining and reviewing safety and health practices and policy;
  - acknowledge the size and complexity of a safety system will depend on the size and complexity of the mine site, and its attendant risks.

*This clause is a process-based standard requiring a safety and health management system, which is based on a risk-based approach. Therefore the safety and health management system will be developed in accord with the requirements under the 'Control and management of risk' section above. This clause sets out the various aspects required of a safety and health management system, which encourages a continuous improvement approach. The last dot point specifically acknowledges that the size and complexity of a safety system will depend on the size and complexity of the mine site, and its attendant risks.*

### **Consultative arrangements**

17. Legislation shall provide for consultation processes, which acknowledge the right of all employees to be involved in the development of the risk-based safety and health management system, policies and practices. The consultation process shall include mine-site consultation which can involve safety and health committees and mine employees' safety and health representatives, and shall provide a mechanism for resolution of safety and health disagreements.

*This clause acknowledges that it is essential that employees are involved in the development of the safety and health management systems, for these processes affect them directly. Employees will know how things are done in practice and why, and often what the risks are. Participation in this process allows individuals to see how their efforts fit into the larger process.*

18. Where appropriate, tripartite industry advisory safety and health councils shall be established to undertake jurisdiction-wide consultation.

*Consultation and communication, sharing ideas and solving issues are important, not just at the mine site level, but also at a jurisdictional level. Workforce, industry and government participation should be catered for, where these stakeholders want to be involved.*

### **Employee representation**

19. Provision shall be made for employees to be informed about hazards in their workplace and to collectively select safety and health representatives to represent them in such matters as:
- workers' inspections and investigations conducted by the employer and the competent authority; and
  - the formulation of safety and health procedures and policies.
20. Employees have the right to remove themselves from any location at the mine when circumstances arise which appear, with reasonable justification, to pose a serious danger to their safety or health.

*This is explicitly acknowledging what is already a common-law right.*

21. If a site safety and health representative reasonably believes there is an immediate danger to the safety and health of mine workers from mining operations, the representative shall have the right to direct the persons to remove themselves from that immediate danger.\*

(\*Please note that this clause is not unanimously agreed.)

*This clause acknowledges that work pressures can sometimes cloud individuals' judgement of a situation, and it requires someone, in this case the safety and health representative, to give the direction for people to remove themselves from an unsafe situation. Appropriate checks and balances would be detailed in legislation. It should be noted that 'safety and health representatives' referred to in this clause will have a different nomenclature in different jurisdictions.*

22. The legislation shall recognise that employees, and their safety and health representatives, have an important role to play in the review of safety and health procedures, the detection and assessment of workplace hazards that may impact on safety and health, the formulation of control measures and the investigation of safety and health concerns raised by employees. They should be empowered to do this without fear of discrimination or retaliation.

*Clause 17 sets out the requirement for employee representation in the development of the health and safety management system. This clause requires that employees are to be involved in the on-going maintenance/review of that system, as set out above.*

### **Mines inspectors**

23. Legislation shall provide for the establishment of a professional and technically competent mines inspectorate with appropriate experience, skills and qualifications.

*It should be noted that ‘Strategy 2–competency support’ and ‘Strategy 3–compliance support’ of the NMSF will address aspects of the appropriate experience, skills and qualifications required.*

24. The inspectorate shall be provided with adequate powers and resources to undertake an independent evaluation of the operator’s safety and health management system. This shall include: enforcing the legislation; monitoring safety and health performance; inspecting and auditing mines; providing coaching, mentoring, education and sharing of information including during emergencies; directing remedial actions to be undertaken in the event of unsafe practices; and investigating complaints, fatalities, serious accidents, dangerous occurrences and any other matter relating to the safety and health of mine workers.

### **Accidents, Incidents and dangerous occurrences**

25. Legislation shall include provisions for the investigation of accidents, incidents and dangerous occurrences and define the means by which these events are investigated and reported upon.

Key findings and preventative measures arising from investigations shall be made available to all stakeholders at the earliest opportunity.

*Given the aim of investigations is to identify causes to prevent similar incidents from happening, it is important that stakeholders have access to reports so preventative action can be taken as soon as possible.*

*Information will be released as soon as it is legally and ethically able to be released. There may be a considerable delay in the release of information where, for example, it is part of a coronial inquest or forms part of a prosecution that may be mounted by a regulatory authority.*

26. Legislation shall provide for sites and associated equipment to be left undisturbed until investigations are complete and for those that are allowed to be disturbed with the approval of the inspectorate.

## **Fitness for work**

27. Provision may be made to cover the health surveillance of workers exposed to occupational health hazards specific to mining and to determine a worker's fitness to safely perform specific duties. The type of health surveillance required will need to consider the types of hazards, the exposure of individuals to hazards and whether any hazardous exposure would result in health deterioration after long-term or short-term exposure. A broad range of health hazards should be considered.

*It should be noted that Strategy 5 of the NMSF aims for a 'consistent and reliable data and analysis'. It is intended that in the future health surveillance will be included in a national data set, collected in all jurisdictions. The initial proposed data set is also available for public comment.*

28. The mine safety management system shall identify and manage the hazards associated with fitness for work issues, including:
- fatigue management;
  - drugs and alcohol impairment;
  - the effects of exposures in the working environment, such as dust, noise, heat and chemicals;
  - relevant health surveillance for occupational health hazards specific to the mine.

These fitness for work issues shall be addressed through nationally consistent codes of practice, standards or guidelines.

*The mine safety and health management system, identified in clause 16, must address the above fitness for work aspects. These aspects impact on both the fitness of the individual to undertake the work safely, and the impact of the work on the individual. Codes of Practice or Standards can provide guidance, as per clause 41.*

## **Emergency response**

29. Provision must be made for the establishment of mine emergency response resources and procedures and, where necessary, mines rescue facilities and personnel for reasonably foreseeable events.
30. Emergency response plans shall clearly specify how the mine will interact with emergency authorities, the conduct of emergency operations and the regular testing and review of emergency response capabilities.

## **Reporting**

31. The legislation shall provide for specified timeframes for reporting accidents, incidents and dangerous occurrences to the regulator.
32. Legislation shall also provide for regulatory authorities to collect accident, incidents, occupational disease and dangerous occurrence statistics and analyse and publish such statistics in a timely fashion. Statistics collected and published shall be to a uniform national standard.

*It should be noted that Strategy 5 of the NMSF aims for a 'consistent and reliable data and analysis'. An initial national data set has been developed, and is also available for public comment.*

### **Mine plans**

33. The legislation shall provide for the surveying of mines by competent survey personnel and the preparation by competent personnel of appropriate plans drawn to an accuracy and to a scale that are 'fit for purpose'. The plans shall be prepared before the start of operations and shall be brought up to date periodically during operations and at cessation of operations. The plans should show surface and underground workings, relevant features and escape routes and should be referenced to the Geocentric Datum of Australia (GDA) and the Australian Height Datum (AHD).

*Accurate plans can then be referred to in the future, ensuring management is informed of previous mining activities, or activities undertaken near the mine.*

34. Where more than one seam, level or deposit is worked at a mine, plans shall be prepared so that the location of the workings of each seam or deposit can be clearly related to each other.
35. Provision shall be made for retention and accessibility of appropriate mine plans by a government agency following cessation of mining operations.
36. These provisions shall apply unless the regulator otherwise determines.

*Small mines may be exempted from the operation of these provisions where the regulator forms the view that lesser requirements are appropriate, having regard to the relative risks of the mine and the practicality and reasonableness of applying these requirements.*

### **Offences**

37. The enforcement provisions of the legislation shall include a range of corrective measures including penalties in the event of non-compliance with the legislation.
38. Such corrective measures and penalties shall be framed to reflect the nature of non-compliance and the potential consequence. Provision shall be made for graduated enforcement measures. .

*It should be noted that Strategy 4 of the NSMF is a 'nationally co-ordinated protocol on enforcement.' This protocol, which is still being developed, will include graduated enforcement measures.*

39. Any provisions for penalties shall include provisions for defences and an appeal process to safeguard the rights of individuals and corporations.

## **Regulatory framework and content**

40. The nature and scope of the subordinate mining safety and health regulations shall be specified and be capable of covering the risks that may be present in mining operations. In particular, principal hazards and safety and health practices which are relevant to the mining industry shall be addressed in regulations. Issues may be mining specific, for example, mine ventilation, ground or strata control, and means of egress; or they may be generic, for example, explosives, fire fighting, or hazardous atmospheres.

*This clause is drafted to acknowledge that in some jurisdictions, the safety and health at mines falls under broader OHS legislation, thus the importance of safety and health regulations which are specific to mining. There are some well-known risks in the mining industry, such as those listed above, and some of these have tried and tested management solutions. These risks, and where necessary the management of these risks may be included in the regulations.*

## **STRUCTURE AND RELATIONSHIPS**

41. Legislation and standards covering mining operations shall encourage continuous improvement in OHS outcomes. They shall consist of a range of approaches, incorporating a mix of principles, performance and process-based standards and prescription. Such a mix shall strike a balance between a proactive and systematic approach to safety management, the identification of outcomes to be achieved and, where necessary, the specification of prescriptive measures.

*This clause is a statement acknowledging the intent of the legislation, and the range of approaches that are evident in these overarching principles and key features.*

42. The Act and Regulation may be supplemented by nationally consistent Standards or Codes of a subordinate legislative nature, such as guidelines or codes of practice. The legislative implications of such guidelines or codes of practice shall be specifically identified.

*The intention of this clause is that new national codes of practice or guidelines will be developed over time. State/Territory based codes of practice or guidelines will continue to operate until replaced by an appropriate national code or guideline.*

**NATIONAL MINE SAFETY FRAMEWORK  
CONSULTATION FRAMEWORK**

**Duty of employer to consult**

1. An employer must consult with employees to enable them to contribute to the making of decisions affecting their safety and health at work.

**When consultation is required**

2. Consultation must occur in all matters related to safety and health, including but not limited to:
  - the development of risk-based safety and health management systems;
  - identification of hazards;
  - making decisions about measures to be taken to control risks;
  - changes to premises, work systems or methods, or plant or substances which may affect health and safety;
  - procedures for consultation; and
  - monitoring of health.

**How consultation is undertaken**

3. The broad mechanisms for consultation can include one or more of the following:
  - Health and Safety Representatives (HSRs) and/or;
  - Occupational Safety and Health (OSH) Committee and/or;
  - Other agreed arrangements.

The employer must consult with employees on the formal OSH consultative arrangements to be adopted at the workplace.

*The broad mechanisms of consultation is aimed to be sufficiently flexible to suit a wide variety of circumstances. It shall provide for employees and employers to shape their own consultative arrangements.*

**Advice, Assistance and Representation**

4. To assist with consultation employers and employees (including HSRs) may seek assistance, advice or representation as required.

## **Establishment of Committees, election of representatives or other arrangements**

5. Employees can collectively select through democratic processes, committee members and/or health and safety representatives. Alternatively the workplace may choose an other arrangement provided such an arrangement is agreed to by a majority of employees.
6. The employer shall provide for:
  - the formation of a committee where the majority of employees so request or where initiated by the employer;
  - the election of HSRs when requested by one or more employees;
  - alternative arrangements where the majority of employees agree;
  - consultation to occur on the level of coverage for HSRs and committees.
7. In the case of an OHS Committee the following procedures are to apply:
  - The employee representatives must be elected by and from the employees in the relevant workgroup the committee represents;
  - The number of employer representatives on a committee must not exceed the number of employee representatives on the Committee;
  - The chairperson of a committee is not to be an employer representative;
  - The employer representatives have the appropriate authority to make decisions or effectively act upon OHS issues raised by the Committee.

## **Establishing consultation arrangements**

8. As part of the consultation process the employer and employees shall establish as appropriate:
  - procedures for consultation;
  - representation of workgroups;
  - number of employer and employee representatives;
  - reporting and meeting arrangements;
  - training of HSRs and committee representatives;
  - relationships with other workgroups of other employers (e.g. contractors);
  - arrangements for elections;
  - a dispute resolution mechanism.

Any of these matters that remain unresolved may be referred by either party to the jurisdictions' regulatory body.

## **Functions of health and safety representatives**

9. The functions of the HSRs, may include the following:
  - conduct investigations;
  - accompany an inspector in investigations and inspections;
  - accompany an employer in their investigations;
  - in consultation with the employer to inspect all or part of the workplace at any time in relation to OHS matters;

- make enquiries about operations relevant to health and safety;
- access to relevant documents and information;
- consult and cooperate with the manager of the mine and liaise with the employees on OHS matters;
- participate in the development and implementation of the safety management system;
- make recommendations on OHS training;
- receive a copy of any improvement/prohibition notices issued;
- be informed immediately of any accident or hazardous occurrence that may affect the safety and/or health of any worker and to be given copies of any reports prepared by or on behalf of the employer in relation to the occurrence.

### **Functions of Health and Safety Committees**

10. The functions of OHS Committees may include the following:

- To facilitate consultation and cooperation between employers and the employees in relation to OHS matters.
- To keep itself informed as to standards relating to safety and health
- To recommend to the employer and employees the establishment, maintenance and monitoring of programmes relating to the health and safety of employees
- To keep in a readily accessible place, information in relation to hazards that arise or may arise at the workplace;
- To consider and make such recommendations to the employer as to any changes or intended changes to the workplace that may reasonably be expected to affect the health and safety of employees at the workplace;
- To consider any matters referred by a health and safety representative; and
- To perform such other functions which may be prescribed in regulations or given to the committee, with its consent, by the employer

### **Workgroups represented by HSRs or OHS Committees**

11. The relevant workgroups to be represented by HSR's or Committee's are to be determined in a manner that ensures that they are able to represent effectively the employees in each workgroup and to have meaningful communication with the employees in the workgroup they represent. The following factors shall be considered in identifying the matters, areas or kinds of work in respect of which each HSR or Committee is to perform their functions:

- hours of work, including shift work and roster schedules;
- patterns of work (e.g. part time, seasonal or short term employees);
- number and grouping of employees;
- location of work;
- different types of work performed;
- attributes of employees (e.g. age, ethnicity, gender);
- relationships with other workgroups of other employers (e.g. contractors and the interaction of employees with the employees of other employers).

### **Obligations of employer with respect to duty to consult**

12. The employer is obligated to ensure that consultation can occur and those involved in consultation are both given assistance to do so and not discriminated against or disadvantaged by virtue of that consultation.

13. To ensure adequate consultation can occur, the employer shall:

- keep records;
- communicate outcomes;
- make time available for consultation during work hours;
- provide reasonable facilities and access for the purpose of consultation;
- ensure employees participating are not financially disadvantaged and any reasonable costs incurred are met;
- facilitate consultation with representatives of other employers at the mine site;
- ensure that employees participating in consultation are not discriminated against because of that representation;
- allow HSRs time off work to attend relevant and agreed training without loss of remuneration or other entitlements;
- provide relevant information in an accessible format.

### **Training**

14. HSRs and OHS committee members shall undertake training, to ensure they have the relevant skills to undertake their responsibilities. Training is to be conducted by a provider that has been accredited by the relevant regulatory authority, and has been agreed between the employer and employee.