

To: **BETTER REGULATION NSW**

Re: **AUDIOMETRIC TESTING – CLAUSE 58 – WORK HEALTH AND SAFETY REGULATION**

7 November 2022

Introduction

The Association of Mining and Exploration Companies (AMEC) welcomes the opportunity to provide a submission to the Better Regulation Division NSW on the *Discussion Paper – Work, Health and Safety Regulation (WHS Regulation) Clause 58 - Audiometric Testing*. (Discussion Paper).

About AMEC

AMEC is a leading national minerals industry association representing over 500 member companies across Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses and services working in and for the minerals industry. AMEC has a growing number of companies working and investing in NSW.

Work, health and safety reform is important to the minerals industry

Work, health and safety (WHS) is, and should always be, a top priority for the minerals industry.

NSW has a wide scope of minerals operations from a one-person exploration site to the complex deep underground coal and metalliferous mines that are all covered by the current WHS Act and Regulation. AMEC continues to support this review of the current regulatory framework and consultation with industry to improve outcomes and processes that support work, health and safety.

AMEC supports the objective of Government action to secure and promote improved safety outcomes for workers in mines and petroleum sites in NSW while establishing a safer and more modern work health and safety system, improving clarity and transparency for industry and the Regulator, and improving the flexibility of how regulation is applied as well as decreasing regulatory burden.

Audiometric Testing requirements in NSW Regulation is a ‘one size fits all’

Audiometric testing requirements for employers in NSW is detailed in Clause 58 of the WHS Regulation and applies to a “*worker who is frequently required by the person conducting the business or undertaking to use personal protective equipment to protect the worker from the risk of hearing loss associated with noise that exceeds the exposure standard for noise.*”¹

However, since the commencement of the WHS Regulation in 2012, Clause 58 has not been in effect in NSW as SafeWork NSW has issued a series of exemption. The Discussion Paper sets out three potential options for consideration of clause 58 including:

- Continue with the WHS regulator issuing class exemptions, which prevents clause 58 from taking effect
- Cease issuing exemptions, and allow clause 58 to take effect, or
- Repeal clause 58.

Minerals industry regularly supplies PPE to support workers and visitors

The Regulation does not provide clarification of when nor how often noise personal protective equipment (PPE) should be provided other than “*used or worn by a person to minimise the risk to a person’s health and safety*”, nor clarification on “*frequently*” that would necessitate audiometric testing should Clause 58 come into effect.

The minerals industry takes WHS seriously and regularly provides hearing protection in cases where other industries may not, such as a visitor to a site and for many workers as part of basic PPE, regardless of their location or duties at a site. A broad requirement for audiometric testing is open to interpretation and subjectivity and places all testing (regardless of the location and length of exposure) under the same compliance requirements. Having a one size fits all approach towards audiometric testing, specifically the provision of providing at least one test in every two-year period can be a resource costly exercise, especially for small companies and companies in remote locations where testing centres are not easy to source.

Audiometric testing is already difficult to source, especially in regional communities

AMEC members report the current difficulty in sourcing audiometric testing, particularly in regional communities in NSW. Regional communities are already experiencing difficulty in obtaining medical advice from health practitioners in a timely and efficient manner, so should audiometric testing become a mandatory requirement, this will put a strain on already struggling regional communities.

We understand that audiometric testing is particularly difficult to source as a hearing booth is required for the test to take place. One member based in Orange reported needing to transport approximately 30 staff members to another company’s site for audiometric tests as there were no other local providers.

If audiometric testing becomes mandatory, consideration of resourcing and testing availability must be undertaken.

¹ <https://www.legislation.gov.au/Details/F2011L02664>

Recommendations

AMEC provides the following comments and recommendations:

1. **Support the provision of testing with guidance and exemptions** - The Discussion Paper provides three potential options for consideration but there is little detail on guidance for the testing, reporting and compliance requirements. AMEC recommends that if the removal of the Clause 58 exemption is undertaken (i.e. audiometric testing becomes mandatory) then clear guidance is provided for industry that details the testing requirements, reporting and compliance processes as well as alternatives or consideration when testing is difficult to source.
2. **Detail transitional arrangements** – Should audiometric testing requirements take effect, the change will come at a considerable cost, both in time and money, to industry. Audiometric tests take approximately 15 minutes to conduct and costs approximately \$150 to \$200 per person per test and will impact hundreds of thousands of workers and companies across the State in multiple industry sectors. AMEC recommends that an extension to allow for testing in the next three years (i.e. additional two years from the end of 2023) to allow adequate time for organisations to arrange testing and the effective implementation of any new procedures and/or systems.
3. **Clarify compliance requirements** - The WHS Regulation and Discussion Paper do not provide details of reporting requirements (if any) should audiometric testing requirements come into effect, nor potential compliance actions and penalties. AMEC recommends consultation with industry regarding compliance and reporting requirements as appropriate.
4. **Provide a communication strategy for the new regulatory requirement** – Should Clause 58 take effect, the NSW Government must provide an effective communications to industries and workers. AMEC recommends a clear information is provided well ahead of the change as well as support to understand requirements and expectations.

The minerals industry looks forward to the outcome of this next stage in this important reform and AMEC would welcome further consultation on this important matter. If you have any queries regarding this submission, please do not hesitate to contact:

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AMEC