



ACT
Government

Chief Minister and Treasury

International Labour Organisation

Safety and Health in Mines Convention, 1995 (No. 176)

Law and Practice Report of the ACT

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International Labour Organisation

Safety and Health in Mines Convention, 1995 (No. 176)

Law and Practice Report of the Australian Capital Territory

April 2013

Overview

The ACT has a small number of quarries and gravel pits which may be regarded as mines for the purposes of Convention 176. The ACT has no underground or coal mines as defined.

The *Work Health and Safety Act 2011* ('WHS Act') and *Work Health and Safety Regulation 2011* ('WHS Regulation') came into effect in the ACT on 1 January 2012. These laws apply comprehensively to all workplaces, employers and mines as defined in the Convention and provide for a coherent national policy on work health and safety matters. These laws implement a risk management approach to safety that requires risk to be eliminated, controlled and then minimised by a hierarchy of controls consistent with the Convention. They also contain extensive provisions on worker rights and the obligation to conduct worker consultation. These laws are complemented by Codes of Practice and guidance materials, some of which are designed specifically to provide for safety in mines.

Work health and safety laws were formulated with significant input from peak national stakeholders representing workers and employers and the general public. In the ACT, this process was supplemented by consultation with the ACT Work Safety Council, a statutory tripartite advisory body representing the interests of workers, business and the general community. These are periodically reviewed at ACT and national levels.

In 2012 national model provisions dealing comprehensively with specific safety hazards that present in mines have been agreed for implementation in all participating States and Territories ('Mining Regulations'). It is the present intention of the ACT to implement these provisions as Chapter 10 of the WHS Regulation. On that basis, the ACT's response sets out both the WHS Act and WHS Regulation provisions that contribute to compliance with the Article and those supplementary provisions of the Mining Regulation.

The Mining regulation provides for matters including worker training, supervision and inspection of mines, reporting and investigating of incidents and the compilation and publication of relevant statistics. Taken with the WHS laws, this covers mine rescue, amenities, first aid, medical facilities, respiratory devices, emergency plans and mine workings plans. The Mining regulation also provides for the security of abandoned mine workings.

WorkSafe ACT, as the relevant regulator, operates to ensure the effective enforcement of relevant laws through appropriate inspection services and with access to offences with appropriate penalties and other corrective measures under the law. In particular, WorkSafe ACT is empowered to suspend or restrict activities on safety grounds through legislated compliance and enforcement tools. WorkSafe ACT also ensures that the rights of workers and their representatives to be consulted on, and participate, in work health and safety matters, is observed in mines.

Relevant additional provisions on dangerous substances at all stages are set out in the *Dangerous Substances Act 2004* and supporting subordinate laws. This covers the manufacture, storage, transport and use of explosives and initiating devices and applies to many physical, chemical or biological hazards in addition to the WHS Act and WHS Regulation.

PART I: DEFINITIONS**Article 1**

1. For the purpose of this Convention, the term *mine* covers –

(a) surface or underground sites where the following activities, in particular, take place:

(i) exploration for minerals, excluding oil and gas, that involves the mechanical disturbance of the ground;

(ii) extraction of minerals, excluding oil and gas;

(iii) preparation, including crushing, grinding, concentration or washing of the extracted material; and

(b) all machinery, equipment, appliances, plant, buildings and civil engineering structures used in conjunction with the activities referred to in (a) above.

2. For the purpose of this Convention, the term *employer* means any physical or legal person who employs one or more workers in a mine and, as the context requires, the operator, the principal contractor, contractor or subcontractor.

ACT Response

The model Mining Regulation and WHS legislation comply with Article 1.

Definition of Mine

The *Work Health and Safety Act 2011* (ACT) (WHS Act) does not define the term ‘mine’ although it is used in the context of provisions that provide for the regulation of a confined space. The national model provisions that will form Chapter 10 of the Work Health and Safety Regulation 2011 (‘the Mining Regulation’) define mine, at s.609 as a place that is a workplace at which mining operations are carried out or a tourist mine. It specifies that this includes any fixtures, fittings, plant or structures at the place that are used or were formerly used for mining operations.

For the purpose of defining a ‘mine’, s.8 of the WHS Act defines ‘workplace’ as a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

Further, ‘mining operations’ is defined at s.610(1) of the Mining Regulation to cover:

- activities carried out for the purpose of extracting minerals from the ground or injecting minerals into the ground, or, exploring for minerals by mechanical means that disturb the ground; and
- activities carried out in connection with mining activities at a site, or at a site adjoining or in the vicinity of a site, at which the mining activities are carried out.

Section 611 clarifies that mineral, for the Mining Regulation, does not include water and covers

a naturally occurring element or inorganic compound, coal, lignite, peat, oil shale, rock, stone, gravel and sand.

Section 610(2) clarifies that ‘mining operations’ includes handling or storing extracted materials, preparing or processing extracted materials and:

- constructing a site where a mining activity or activities carried out in connection with these activities (including a site adjoining or in the vicinity of the site);
- activities associated with decommissioning, making safe or closure of an extraction or exploration site; and
- educational activities and tourist activities carried out at a site, or at a site adjoining or in the vicinity of a site, at which the mining activities are carried out.

However, section 610(3) provides that ‘mining operations’ does not cover:

- an activity carried out in relation to the extraction of minerals on private land for the private and non-commercial use of the landowner,
- fossicking, or any other activity where the extraction of minerals is incidental to the activity.

The definition of mine for the Mining Regulation does not cover tourist mines. These are workplaces used only for tourism purposes at which mining operations were formerly carried out and at which a principal mining hazard was present when mining operations were carried out (s.609(2) Mining Regulation). A ‘principal mining hazard’ is, under s.612, any activity, process, procedure, plant, structure, substance, situation or other circumstance relating to the carrying out of mining operations that has a reasonable potential to result in multiple deaths in a single incident or a series of recurring incidents, in relation to:

- ground or strata failure;
- inundation or inrush of any substance;
- mine shafts and winding operations;
- roads or other vehicle operating areas;
- air quality or dust or other airborne contaminants;
- fire or explosion;
- gas outbursts;
- spontaneous combustion; or
- a further hazard identified by the mine operator (see s.34 Mining Regulation).

Definition of ‘employer’

The principal duty holder under Work Health and Safety laws in the Territory is ‘a person conducting a business or undertaking’ (PCBU). For the purposes of Article 1 (2) of the Convention this wholly covers the concept of ‘employer’ described.

The term PCBU covers both individuals and bodies corporate (including partnerships and unincorporated associations). As set out in the Explanatory Statement to the WHS Act, clause 5(2), which defines PCBU, should be read broadly to cover employers, principal contractors, head contractors, franchisors and Government entities. Section 5(4) clarifies that a person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.

PART II: SCOPE AND MEANS OF APPLICATION**Article 2**

1. This Convention applies to all mines.
2. After consultations with the most representative organizations of employers and workers concerned, the competent authority of a Member which ratifies the Convention:
 - (a) may exclude certain categories of mines from the application of the Convention, or certain provisions thereof, if the overall protection afforded at these mines under national law and practice is not inferior to that which would result from the full application of the provisions of the Convention;
 - (b) shall, in the case of exclusion of certain categories of mines pursuant to clause (a) above, make plans for progressively covering all mines.
3. A Member which ratifies the Convention and avails itself of the possibility afforded in paragraph 2(a) above shall indicate, in its reports on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organization, any particular category of mines thus excluded and the reasons for the exclusion.

ACT Response

The model Mining Regulation and WHS legislation comply with Article 2.

The model Mining Regulation applies to all mines as defined in Convention 176 and does not provide for any exclusions.

Article 3

In the light of national conditions and practice and after consultations with the most representative organizations of employers and workers concerned, the Member shall formulate, carry out and periodically review a coherent policy on safety and health in mines, particularly with regard to the measures to give effect to the provisions of the Convention.

ACT Response

The ACT has a coherent policy on work safety and health that applies to all workplaces, including mines. This policy, as expressed in law and practice, deals with those measures required to give effect to the provisions of the Convention. It is the subject of consultation with members of the ACT Work Safety Council, a tripartite body representing workers, employers and the broader community and is subject to periodic review.

Mine safety is required in the Territory under the WHS Act, particularly the principal safety duty set out in section 19. There are no separate mine safety laws outside the work health and safety framework and other general regulatory legislation (for example, the *Dangerous Substances Act 2004* and subordinate regulations). The Mining Regulation provides for the application of work health and safety policy to the specific context of mines as a workplace, principally under section 610.

In November 2005, the then Ministerial Council on Mineral and Petroleum Resources established the National Mine Safety Framework (NMSF). The NMSF Steering Group is responsible for guiding the development and implementation of the National Mine Safety Framework which aims to achieve a nationally consistent OHS regime in the Australian mining industry. This work has been integrated with the broader OHS harmonisation work being undertaken by Safe Work Australia under the direction of the Select Council on Workplace Relations.

Safe Work Australia was established in 2009 as the national policy body for work health and safety and workers' compensation. Safe Work Australia is a tripartite body comprising 15 members, including a Chair, the Safe Work Australia CEO, representatives of the Commonwealth, all states and territories and two members each from employer and union groups - currently the Australian Chamber of Commerce and Industry, the Australian Industry Group and Australian Council of Trade Unions. The ACT is a member of Safe Work Australia and has participated through that body in the development of national mine safety laws.

The development of nationally consistent mine safety legislation (Strategy 1) has been the primary focus of the NMSF Steering Group work, including its integration with the development of national model Work Health and Safety (WHS) laws by Safe Work Australia to ensure a consistent and collaborative approach to OHS reform.

In relation to occupational health and safety more generally, in July 2008 the Commonwealth, state and territory governments committed to harmonising work health and safety (WHS) legislation by 1 January 2012 through an Inter-Governmental Agreement (IGA). On 1 January 2012, the WHS Act and Work Health and Safety Regulation 2011 came into effect in the ACT.

National Consultation Processes

The model WHS legislation is the result of a review of the nine sets of work health and safety laws across Australia. It was agreed following extensive consultation.

A national OHS review was carried out by a panel of three independent experts who made 232 recommendations to Ministers after consulting with more than 260 individuals, incorporated representatives from over 100 organisations across Australia, including regulators, union and employer organisations, industry representatives, legal professionals, academics and health and safety professionals. The panel also received 243 written submissions from various organisations and individuals. In May 2009, Ministers set the policy parameters for Safe Work Australia to develop the model WHS Act based on the recommendations of the review panel.

Safe Work Australia and its subcommittees have met numerous times since January 2010 to consider the draft model WHS Regulations and Codes of Practice. The Safe Work Australia members consulted widely with local stakeholders and members about the content of the model WHS laws during this process. Safe Work Australia also held five public consultation periods for the model WHS legislation. During these periods a total of 2229 submissions were received.

ACT Consultation Processes

The ACT consults on work health and safety policy matters with the ACT Work Safety Council, a statutory tripartite advisory body established under Schedule 2 of the WHS Act. Council members are appointed to represent the interests of workers and employers as well as the ACT community more broadly. The Council also provides advice on workers compensation, bullying and other psychosocial hazards in the workplace.

Article 4

1. The measures for ensuring application of the Convention shall be prescribed by national laws and regulations.
2. Where appropriate, these national laws and regulations shall be supplemented by:
 - (a) technical standards, guidelines or codes of practice; or
 - (b) other means of application consistent with national practice, as identified by the competent authority.

ACT Response

The ACT considers that it complies with Article 4 of this Convention.

Those work health and safety measures that ensure application of the articles of this Convention are set out in legislation, both principal and subordinate, under relevant work health and safety laws. The model Mining Regulation, which will form part of those laws, complements those provisions that are of general application to all workplaces.

The following Codes of Practice of relevance in the ACT will supplement the relevant legislation and existing Codes of Practice and guidance material of relevance to all workplaces:

- *Safety Management Systems in Mining*
- *Managing Risks of Hazardous Chemicals in the Workplace*
- *Roads and Other Vehicles Operating Areas*
- *Inundation and Inrush Hazard Management*
- *Emergency Response at Australian Mines*
- *Surveying and Drafting for Mine Survey Plans*
- *Ground Control in Open Pit Mines*

The National Mine Safety Framework, utilising the Minerals Industry Risk Management Gateway, has developed ComplianceGate as an online repository of state and territory guidance material, technical standards and codes of practice. It has been developed to enable centralised access to information and facilitate information sharing between state and territories (see www.mirmgate.com/index.php?gate=compliancegate).

To ensure consistent application, the model WHS Act and Regulations and the model Mining Regulations are also supported by a National Compliance and Enforcement Policy, which sets out the approach regulators should take to compliance and enforcement activities.

Article 5

1. National laws and regulations pursuant to Article 4, paragraph 1, shall designate the competent authority that is to monitor and regulate the various aspects of safety and health in mines.

2. Such national laws and regulations shall provide for:

(a) the supervision of safety and health in mines;

(b) the inspection of mines by inspectors designated for the purpose by the competent authority;

(c) the procedures for reporting and investigating fatal and serious accidents, dangerous occurrences and mine disasters, each as defined by national laws or regulations;

(d) the compilation and publication of statistics on accidents, occupational diseases and dangerous occurrences, each as defined by national laws or regulations;

(e) the power of the competent authority to suspend or restrict mining activities on safety and health grounds, until the condition giving rise to the suspension or restriction has been corrected; and

(f) the establishment of effective procedures to ensure the implementation of the rights of workers and their representatives to be consulted on matters and to participate in measures relating to safety and health in the workplace.

3. Such national laws and regulations shall provide that the manufacture, storage, transport and use of explosives and initiating devices at the mine shall be carried out by or under the direct supervision of competent and authorized persons.

4. Such national laws and regulations shall specify:

(a) requirements relating to mine rescue, first aid and appropriate medical facilities;

(b) an obligation to provide and maintain adequate self-rescue respiratory devices for workers in underground coal mines and, where necessary, in other underground mines;

(c) protective measures to secure abandoned mine workings so as to eliminate or minimize risks to safety and health;

(d) requirements for the safe storage, transportation and disposal of hazardous substances used in the mining process and waste produced at the mine; and

(e) where appropriate, an obligation to supply sufficient sanitary conveniences and facilities to wash, change and eat, and to maintain them in hygienic condition.

5. Such national laws and regulations shall provide that the employer in charge of the mine shall ensure that appropriate plans of workings are prepared before the start of operation and, in the event of any significant modification, that such plans are brought up to date periodically and kept available at the mine site.

ACT Response

The ACT considers that it complies with Article 5 of this Convention, taking into account the intended implementation of the Mining Regulation.

Article 5(1)

WorkSafe ACT is the competent authority and regulator with the function to monitor and enforce compliance with the WHS legislation in the Territory.

Article 5(2)(a)

The model Mining Regulation provides for the regulator to supervise safety and health in mines. For example, section 616 provides for the mine holder to notify WorkSafe ACT before commencing mining operations.

Article 5(2)(b)

Section 156 of the WHS Act provides that WorkSafe ACT may appoint inspectors to secure compliance with the Act. Under section 163 of the WHS Act, WorkSafe ACT inspectors may at any time enter a place that is, or that the inspector reasonably suspects is, a workplace. This includes a mine.

Article 5(2)(c)

Part 3 of the WHS Act outlines incident notification requirements under the Act. Under the WHS Act, a PCBU must ensure that the regulator is notified (either by telephone or in writing) immediately after becoming aware that a notifiable incident (the serious injury, illness or death of a person or a dangerous incident) arising out of the conduct of the business or undertaking has occurred (s. 38).

In addition to notifiable incidents, section 675S of the model Mining Regulation provides that the mine operator of a mine must take all reasonable steps to ensure that the regulator is notified as soon as possible after becoming aware of an incident arising out of the carrying out of mine operations at the mine. The notification must be in writing, in a form required by the regulator, and in the case of an incident that results in an illness or injury, contain the details specified in Schedule 23.

Under the model Mining Regulation, incident means an incident that:

- (a) results in illness or injury that requires medical treatment within the meaning of item 13.2 of schedule 24; or
- (b) is a high potential incident or event referred to in section 37(a) to (1) of the WHS Act that would have been a dangerous incident under section 37 if a person were in the vicinity at the time when the incident or event occurred and in usual circumstances a person could have been in that vicinity at that time.

Further information regarding the requirements of incident notification under WHS Legislation is outlined in Article 10.

In investigating possible breaches of work health and safety duties under the WHS Act, WorkSafe ACT inspectors would follow the ACT *WHS Compliance and Enforcement Policy 2009* and the Australian Government Investigation Standards 2011.

Article 5(2)(d)

Under section 153(e) of the WHS Act WorkSafe ACT has the function of collecting analysing and publishing statistics relating to work health and safety.

In addition, under section 675T of the model Mining Regulation, the mine operator of a mine must give the regulator a quarterly work health and safety report in accordance with the Regulation. The report must be given at the times or intervals (including annually) and in the manner and form required by the regulator and contain information specified in schedule 24. Details of the information that is to be included in the quarterly work health and safety reports is outlined in Article 10(e).

The ACT also provides input to statistics published by Safe Work Australia.

Article 5(2)(e)

Under section 195 of the WHS Act, where a WorkSafe ACT inspector reasonably believes that an activity is occurring, or may occur, at a workplace that involves, or will involve, a serious risk to the health or safety of a person from an immediate or imminent exposure to a hazard, the inspector may issue a prohibition notice, prohibiting the person the carrying on of the activity, or the carrying on of the activity in a specified way, until the inspector is satisfied that the matters that give or will give rise to the risk have been remedied.

Where a person to whom a prohibition notice is issued fails to take responsible steps to comply with the notice, WorkSafe ACT has the power to take any remedial action it believes reasonable to make the workplace or situation safe, after giving the person the Regulator's intention to take that action and the owner's or person's liability for the costs of that action (s. 211).

Where WorkSafe ACT reasonably believes that circumstances in which a prohibition notice can be issued exist and a prohibition notice cannot be issued at a workplace because, after taking reasonable steps, the person with management or control of the workplace cannot be found, the Regulator may take any remedial action necessary to make the workplace safe (s. 212).

Article 5(2)(f)

Under section 47 of the WHS Act, a PCBU must, so far as is reasonably practicable, consult, in accordance with division 5.1 and the WHS Regulation, with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to work health or safety. If the PCBU and the workers have agreed to procedures for consultation, the consultation must be in accordance with those procedures but must not be inconsistent with section 48.

Under section 48 of the WHS Act, consultation requires that:

- relevant information about the matter is shared with workers; and
- workers be given a reasonable opportunity to express their views, to raise work health or safety issues in relation to the matte and to contribute to the decision-making process relating to the matter; and
- the views of workers are taken into account by the PCBU; and

- the workers consulted are advised of the outcome of the consultation in a timely manner.

In addition, if the workers are represented by a health and safety representative, the consultation must involve that representative.

Under section 49 of the WHS Act, consultation is required:

- when identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking;
- when making decisions about ways to eliminate or minimise those risks;
- when making decisions about the adequacy of facilities for the welfare of workers;
- when proposing changes that may affect the health and safety of workers;
- when making decisions about the procedures for –
 - (i) consulting with workers; or
 - (ii) resolving work health and safety issues at the workplace; or
 - (iii) monitoring the health of workers; or
 - (iv) monitoring the conditions at any workplace under the management or control of the PCBU; or
 - (v) providing information and training for workers; and
- when carrying out any other activity prescribed by regulation for the purposes of this section.

Under section 621(e) of the model Mining Regulation, the safety management system for a mine must describe the arrangements in place, between any PCBUs at the mine, for consultation, co-operation and the co-ordination of activities in relation to compliance with their duties under the WHS Act and this Regulation.

Section 675N of the model Mining Regulation provides that the mine operator of a mine must implement a safety role for the workers at the mine that enables them to contribute to:

- the identification (in accordance with section 626 of the Regulation) of principal mining hazards relevant to the work that the workers are or will be carrying out; and
- the consideration of control measures for risks associated with principal mining hazards at the mine; and
- the conduct of a review under section 628 of the Regulation.

In addition, under section 675O of the model Mining Regulation, the mine operator must consult with workers at the mine in relation to the following:

- the development, implementation and review of the safety management system for the mine;
- conducting risk assessments for principal mining hazard management plans;
- preparing, testing and reviewing the emergency plan for the mine;
- the implementation of the workers' safety role under section 675N of the Regulation; and
- developing and implementing strategies to protect persons at the mine from any risk to health and safety arising from:
 - the consumption of alcohol or use of drugs by any person; and
 - worker fatigue.

Further, section 61 of the WHS Act establishes procedures for the selection by workers of health and safety representatives to represent their interests (s. 48) and for the establishment of health and safety committees (s. 75).

The ACT has also adopted the 'Work Health and Safety Consultation, Cooperation and Coordination Code of Practice', which provides further guidance on the consultation process under WHS Legislation as well as the and the inclusion of health and safety representatives and safety committees in the consultation process.

Article 5(3)

Under section 631 of the model Mining Regulation, the mine operator of a mine must take all reasonable steps to ensure a specified item or substance is not used in a place or for a purpose that is prohibited or restricted, as set out in schedule 20 of the Regulation. Under this schedule, explosives, detonators and exploders (excluding explosive power tool) are prohibited from all uses at any mine, unless for the purpose of shot-firing.

Manufacture of explosives and initiating devices

Section 48 of the Dangerous Substances (Explosive) Regulation 2004 (DS (Explosive) Regulation) (ACT) provides that a person is authorised to manufacture and explosive if the person holds a manufacturing licence authorising the manufacture of the explosive; or is an individual engaged (as an employee or contractor) to manufacture the explosive under the supervision of a person who holds a manufacturing licence. The holder of a manufacturing licence is a person in control of all of the following in relation to the manufacture of an explosive under the licence:

- the handling of the explosive;
- the premises where the explosive is manufactured;
- any associated plant or system; and
- any associated activity (s. 49).

Section 55 of the DS (Explosive) Regulation outlines conditions applying to a manufacturing licence for an explosive, including:

- anyone who handles the explosive or another dangerous substance under the licence must have the appropriate skills and training; and
- the licensee must ensure that no-one other than a security cleared responsible person named in the licence has unsupervised access to the explosive.

Storage of explosives and initiating devices

Section 125 of the DS (Explosive) Regulation provides that a person must not store an explosive unless:

- (a) for a licensable quantity of the explosive, the person is authorised under a storage licence to store the explosive; or
- (b) the storage is blasting and fireworks storage; or
- (c) the (in limited circumstances) storage is exempt storage.

A storage licence authorises the storage of the explosive by the licensee and by the licensee on behalf of a person who owns or controls the explosive, with the written permission of the

licensee. The holder of a storage licence is a person in control of all of the following in relation to the storage of an explosive under the licence:

- the handling of the explosive;
- the premises where the explosive is manufactured;
- any associated plant or system; and
- any associated activity (s. 126).

Section 129 of the DS (Explosive) Regulation outlines conditions applying to a storage licence for an explosive, including:

- the explosive must be an authorised explosive (as defined by the Regulation);
- the licensee must establish and maintain a safety management system, including an emergency management plan, for the storage of the explosive under the licence; and
- the licensee must ensure that no-one other than a security cleared responsible person named in the licence has unsupervised access to the explosive.

In addition, under section 675P of the model Mining Regulation, the mine operator of a mine must ensure that a detailed survey plan of the mine is prepared by a competent person. The mine Survey Plan must show places for the storage of explosives (if they are present at the mine) (s. 675P(3)(f)).

Transportation of explosives and initiating devices

Section 100 of the DS (Explosive) Regulation provides that a person must not carry an explosive by road (in the ACT) unless:

- (a) the person is authorised to carry the explosive by road (in the ACT) under a carrying licence; or
- (b) the person holds an interstate explosives carrying authority that authorises the person to carry the explosive by road (in the ACT); or
- (c) the person
 - drives a vehicle carrying the explosive by road (in the ACT); and
 - is authorised to carry the explosive by road in the vehicle (in the ACT or elsewhere) under an interstate explosives carrying authority; and
 - holds an explosives driving licence, or an interstate explosives driving authority, authorising the driving of the vehicle carrying the explosives by road (whether in the ACT or elsewhere); or
- (d) (in limited circumstances) the person is an exempt carrier under the Regulation.

A carrying licence that authorises the carrying of an explosive by road (in the ACT) authorises the carrying of the explosives by:

- (a) the licensee; or
- (b) an individual who:
 - is engaged (as an employee or contractor) to carry the explosive by road under the supervision of the licensee; and
 - holds an explosives driving license, or an interstate explosives driving authority, authorising the driving of a vehicle carrying the explosive.

Section 101 of the DS (Explosive) Regulation provides that a person must not carry an explosive by rail (in the ACT) unless the person is authorised under a carrying licence or under an

interstate explosives carrying authority to carry the explosive by rail (in the ACT). A carrying licence that authorises the carrying of an explosive by rail (in the ACT) authorises the carrying of the explosives by the licensee or by an individual who is engaged (as an employee or contractor) to carry the explosive by rail under the licensee's supervision.

Section 102 of the DS (Explosive) Regulation provides that a person must not engage someone else to carry an explosive by road or rail. This does not apply if the person whose services are engaged is authorised under section 100 or section 101 to carry the explosive.

Section 106 of the DS (Explosive) Regulation outlines conditions applying to a carrying licence for an explosive, including:

- anyone who handles the explosive or another dangerous substance under the licence must have the appropriate skills and training, including training in the requirements of the Australian Explosives Code as applied for part of the Regulations; and
- the licensee must ensure that no-one other than a security cleared responsible person named in the licence has unsupervised access to the explosive.

Under section 107 of the DS (Explosive) Regulation, a person may drive a vehicle carrying an explosive by road (in the ACT) only if:

- the person is authorised to do so under a carrying licence or an interstate explosives carrying authority and they hold an explosives driving licence or an interstate explosives driving authority authorising the person to do so; or
- the person drives the vehicle carrying a category 2 load of explosives and is authorised to use the explosives under a blasting permit or a fireworks display permit; or
- (in limited circumstances) the person is an exempt carrier.

A person commits an offence (if the person is not an authorised under section 107 of the Regulation to drive a vehicle carrying explosives) if the person:

- (a) owns or controls a vehicle and permits someone else to drive the vehicle to carry an explosive; or
- (b) engages someone else to drive a vehicle to carry an explosive (s. 108).

Section 112 of the DS (Explosive) Regulation outlines matters the Director-General must have regard to a number of matters in deciding whether a person is a suitable person to be issued with, or continue to hold, an explosives driving licence, including whether the person:

- has at least 12 months experiences driving a vehicle or vehicles of the kind or kinds in which the explosives will be carried; and
- has demonstrated adequate knowledge of
 - the Regulation and the Australian Explosives Code that relate to the carrying of explosives by road; and
 - the characteristics of explosives of the various hazard divisions; and
 - the precautions to be taken for the prevention of accidents in the carrying and associated handling of explosives; and
 - the actions to be taken if an emergency happens involving explosives.

(A person satisfied these requirements if the person has completed and passed a training course approved by the Director-General.)

Where an explosive is transported with other dangerous goods, the *Dangerous Goods (Road Transport) Act 2009* would also apply.

Use of explosives and initiating devices

Section 180 of the DS (Explosive) Regulation provides that a person is authorised to use an explosive, or to manufacture ANFO for immediate use, if the person holds a shot-firer licence authorising that use or manufacture or is an individual engaged (as an employee or contractor) to use the explosive, or to manufacture the ANFO, under the direct supervision of a person who holds a shot-firer licence. However, this person must only use an explosive if the blasting operation complies with the Regulation and is authorised by a blasting permit.

Section 182 of the DS (Explosive) Regulation provides that a person in control of premises must ensure that an explosive is used at the premise only by a competent person authorised to use the explosive under part 2.9 of the Regulation and in accordance with a blasting permit for the explosive.

For the Act, the matters the Director-General must have regard to in deciding whether a person is a suitable person to be issued with, or to continue to hold, a licence to handle an explosive include:

- (a) whether an adverse security assessment or qualified security assessment has been given in relation to
 - a. the person or a close associate of the person; or
 - b. if the person is a corporation, an officer of the corporation or a close associate of an officer of the corporation; and
- (b) if the person is an individual, whether the person is:
 - a. an adult; or
 - b. for an explosives driving licence, at least 21 years old (s. 40A).

Under the model Mining Regulation, the following provisions relating to explosives and initiating devices also apply:

- The mine operator must establish, and so far as is reasonably practicable, implement a safety management system for the mine, in accordance with the Regulation. This safety management system must be designed to be used as the mine operator's primary means of ensuring, so far as reasonably practicable, the health and safety of workers at the mine (s. 620). It must also describe the systems, procedures, plans and other control measures that will be used to control risks to health and safety associated with mining operations at the mine (s. 621).
- The mine operator must prepare a principal mining hazard management plan for each principal mining hazard at the mine s.(s. 627). Please refer to Article 7(g) for more information on the requirements of principal mining hazard management plans under WHS Legislation.
- The mine operator of a mine must ensure that a detailed survey plan of the mine is prepared by a competent person (s. 675P).

Article 5(4)(a)

Article 8 provides further information on the requirements of emergency management plans under WHS Legislation.

Division 5 of the model Mining Regulation places a duty on the mine operator of a mine to prepare an emergency plan for the mine, in accordance with division 5, subdivision 1 (s. 661), and to immediately implement the emergency plan in the event of an emergency (s. 663). The emergency plan must:

- address all aspects of emergency response, including by ensuring:
 - the establishment of a system that enables all persons at the mine to be promptly located; and
 - the provision of adequate rescue equipment; and
 - that an adequate number of persons trained in the use of rescue equipment are available to respond effectively to the emergency if a person is working at the mine; and
 - the provision of adequate patient transport if a person is working at a mine; and
- include all matters specified in Schedule 22 of the Regulation; and
- so far as is reasonable practicable, be set out and expressed in a way that is readily understandable by persons who use it.

Under schedule 22 of the model Mining Regulation, on-site emergency resources required include first aid equipment, facilities, services and personnel and off-site emergency resources includes access to additional external resources. The emergency management plan for the mine must also include arrangements for mines rescue that state the following:

- the minimum mines rescue training to be provided;
- any arrangements for the mine operator and mine operators of mines in the vicinity to assist each other in an emergency; and
- the procedures to be followed in carrying out mine rescue.

In addition, the mine operator must ensure that all resources, including rescue equipment, specified in the emergency plan for the mine are provided in accordance with the plan and all equipment, including rescue equipment, specified in the emergency plan is maintained in good working order (s. 665).

The emergency management plan must form part of the safety management system for the mine (s. 621(1)(g)).

In addition, under section 42 of the WHS Regulation, a PCBU at a workplace must ensure the provision of first-aid equipment for the workplace, that each worker at the workplace has access to the equipment and access to facilities for the administration of first aid. A PCBU must also ensure an adequate number of workers are trained to administer first-aid at the workplace or workers have access to an adequate number of other persons who have been trained to administer first-aid.

Further, the ACT has adopted the national model First Aid in the Workplace Code of Practice. The Code supports WHS Legislation in the Territory and provides further guidance on first aid requirements including, equipment, personal training and facilities (including off-site access to medical centres).

Article (9)(d) provides further information on first aid requirements under WHS Legislation.

Article 5(4)(b)

As stated in the overview, the ACT does not have any underground mines.

Article 5(4)(c)

Section 632 of the model Mining Regulation provides that if a mine operator of a mine closes the mine, the mine operator must, at the time of the closure, ensure, so far as is reasonably practicable, that the mine is safe, including by being secure against unauthorised entry by any person.

Article 5(4)(d)

Requirements for the safe storage, transportation and disposal of dangerous substances, which includes hazardous substances, is provided for in the *Dangerous Substances Act 2004* (DS Act) (ACT), *Dangerous Substances (General) Regulation 2004* (DS (General) Regulation) (ACT) and model mining regulation.

Under section 23 of the DS Act, everyone involved in handling a dangerous substance must take all reasonable steps to minimise the risks resulting from handling the substance. Under this Act, 'handle' a dangerous substance includes the following:

- pack, consign or carry the substance;
- store the substance;
- possess, or otherwise have custody or control of, the substance;
- dispose of the substance or render it harmless (s. 11).

Section 82 of the DS Act provides that where a regulation requires a handling of a dangerous substance to be authorised under a licence, a person commits an offence if they handle the substance and are not authorised under a licence to do so.

The person in control of handling a dangerous substance must ensure that a safety management system for handling the dangerous substance is prepared and documents and take all reasonable steps to ensure that:

- the safety management system is implemented and kept up to date; and
- everyone to whom the safety management system applies complies with their duties under the system; and
- people's compliance with their duties under the safety management system is documents under the system (s. 25).

Safe storage of hazardous substances and waste

Under the DS Act (s. 14), a dangerous substance is correctly packed or stored in the following circumstance:

- if a regulation applies to the packing or storage of the substance, the substance is packed or stored in accordance with the regulation; or
- if an incorporated document applies to the packing or storage of the substance, the substance is packed or stored in accordance with the incorporated document; or
- in any other case, the substance is packed or stored in a way that eliminates the hazards associated with the substance or, if this is not reasonably practicable, minimise the risks resulting from the hazards as far as is reasonably practicable.

Section 78 of the DS Act provides that a person commits an offence if a regulation requires a dangerous substance to be stored in a particular way and the person stores the substance in way that is not in accordance with the regulation.

In addition, under section 53 of the WHS Regulation, a PCBU at a workplace must ensure that, if flammable or combustible substances are kept at the workplace, the substances are kept at the lowest practicable quantity for the workplace.

Section 675P of the model Mining Regulation provides that the mine operator of a mine must ensure that a detailed survey plan of the mine is prepared by a competent person. The mine Survey Plan must show places for the storage of hydrocarbons (if they are present at the mine) (s. 675P(3)(f)).

In addition, under section 627 of the model Mining Regulation, the mine operator must prepare a principal mining hazard management plan for each principal mining hazard at the mine (s. 627). A “principal mining hazard” is defined in the Regulation to include any activity, process, procedure, plant, structure, substance, situation or other circumstance relating to the conduct of mining operations that has a reasonable potential to result in multiple deaths in a single incident or a series of recurring incidents, including in relation to fire or explosion (s. 612). Please refer to Article 7(g) for more information on the requirements of principal mining hazard management plans under WHS Legislation.

Disposal of hazardous substances and waste

Under section 233 of the Dangerous Substances (General) Regulation 2004 (DS (General) Regulation) (ACT), where a container is used to store a dangerous substance at a premise with placard or manifest levels of dangerous substances, and the container is to be disposed of, or is no longer used in association with the substance, a person in control of the premises must ensure that:

- the container is thoroughly cleaned so that the container is in the condition it would be in if it had never contained the substance; and
- if the dangerous substance is a gas or volatile liquid, the concentration (calculated at the time-weighted average over 8 hours) of the gas or vapour in the atmosphere of the container is less than the concentration listed in the National Exposure Standards for the substance; and
- if the dangerous substance is of class 2.1 or 3 or subsidiary risk 3 (including a gas or volatile liquid), the concentration of the substance (including the vapours of the substance) in the lower atmosphere in the container is less than 5% of the lower explosives limit for the substance when sampled at ambient temperature.

The transport and disposal of some dangerous substances is also subject to additional requirements under the *Environment Protection Act 1997* and *Road Transport (Dangerous Goods) Act 2009*.

In addition to the specific requirements outlined in Dangerous Substances Legislation, the principal duty of care outlined in section 19 of the WHS Act requires a PCBU to ensure, so far as is reasonably practicable, the health and safety of workers engaged or caused to be engaged by

them. As a part of this duty, the PCBU must ensure, so far as is reasonably practicable, the provision of safe systems of work and the safe handling, storage and transport of plant, structures and substances. They must also ensure, so far as is reasonably practicable, the provision of supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking. These provisions protect all people who carry out work in any capacity for a business or undertaking, regardless of where the work is carried out.

Subject to the model Mining Regulation, the safety management system for a mine must describe the arrangements in place for the supervision needed to protect workers and other persons at the mine from risks to their health and safety from work carried out at the mine (s. 621(k)).

Article 5(4)(e)

Under section 41 of the WHS Regulation, a PCBU at a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets, drinking water, washing facilities and eating facilities. The PCBU must also ensure, so far as is reasonably practicable, that these facilities are maintained so as to be in good working order and clean, safe and accessible.

Article 5(5)

Section 675P of the model Mining Regulation provides that the mine operator of a mine must ensure that a detailed survey plan of the mine is prepared by a competent person. The mine operator must take all reasonable steps to obtain historical mine surveys of the mine to ensure the accuracy of the mine survey plan.

Under section 675Q of the model Mining Regulation, the mine operator must review, and as necessary, revise the mine survey plan:

- (a) if it no longer accurately reflects the working that have been carried out at the mine or the workings that are proposed to be carried out at the mine; or
- (b) if there are reasonable grounds to believe that the mine survey plan is not accurate; or
- (c) at least every 12 months (unless mining operations at the mine have been discontinued or suspended for more than 12 months).

The mine operator must keep the current mine survey plan and all previous versions of the plan available for inspection under the WHS Act (s. 675R(1)) and must make the current mine survey plan available on request to workers at the mine (s. 675R(2)).

PART III: PREVENTIVE AND PROTECTIVE MEASURES AT THE MINE

A: RESPONSIBILITIES OF EMPLOYERS

Article 6

In taking preventive and protective measures under this Part of the Convention the employer shall assess the risk and deal with it in the following order of priority:

- (a) eliminate the risk;
- (b) control the risk at source;
- (c) minimize the risk by means that include the design of safe work systems; and
- (d) in so far as the risk remains, provide for the use of personal protective equipment, having regard to what is reasonable, practicable and feasible, and to good practice and the exercise of due diligence.

ACT Response

ACT laws are compliant with this Article 6 through provisions in the model Mining Regulation, which the ACT will adopt, as well as the *Work Health and Safety 2011* (WHS Act) (ACT).

Part 3.1 of the WHS Regulation outlines the responsibilities of a duty holder has in terms of managing risks to health and safety. A duty holder, in managing risks to health and safety, must identify reasonably foreseeable hazards that could give rise to risks to health and safety (s. 34).

A duty holder, in managing risks to health and safety, must eliminate risks to health and safety so far as is reasonable practicable and if it is not reasonably practicable to eliminate risks to health and safety, minimise those risks so far as is reasonable practicable (s. 35). In minimising risks to health and safety, the duty holder must, so far as is reasonably practicable, implement one or more of the following hierarchy of control measures:

- (a) Substituting (wholly or partly) the hazard giving rise to the risk with something that gives rise to a lesser risk;
- (b) Isolating the hazard from any person expose to it;
- (c) Implementing engineering controls.

If the risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by implementing administrative controls. If a risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by ensuring the provision and use of suitable personal protective equipment (s. 36).

The ACT has adopted the national model Code of Practice on *How to Manage Work Health and Safety Risks*. The Code provides further guidance for persons who have duties under the WHS Act and WHS Regulation to manage risks to health and safety, including detailed information on how to work through the hierarchy of risk control when managing risk. The ACT

has also adopted other Codes of Practice that provide guidance on managing the risk of specific hazards.

Under section 617 of the model Mining Regulation, the PCBU at a mine must manage risks to health and safety associated with mining operations at the mine in accordance with Part 3.1 of the WHS Regulation and must ensure that the risk assessment is conducted by a competent person. Under section 617 of the model Mining Regulation, in conducting a risk assessment, the person must have regard to the nature of the hazard, the likelihood of the hazard affecting the health or safety of a person and the severity of the potential health and safety consequences. This does not limit the operation of any other requirement to conduct a risk assessment under the model Mining Regulation or WHS Regulation.

Article 7

Employers shall take all necessary measures to eliminate or minimize the risks to safety and health in mines under their control, and in particular:

- (a) ensure that the mine is designed, constructed and provided with electrical, mechanical and other equipment, including a communication system, to provide conditions for safe operation and a healthy working environment;
- (b) ensure that the mine is commissioned, operated, maintained and decommissioned in such a way that workers can perform the work assigned to them without endangering their safety and health or that of other persons;
- (c) take steps to maintain the stability of the ground in areas to which persons have access in the context of their work;
- (d) whenever practicable, provide, from every underground workplace, two exits, each of which is connected to separate means of egress to the surface;
- (e) ensure the monitoring, assessment and regular inspection of the working environment to identify the various hazards to which the workers may be exposed and to assess their level of exposure;
- (f) ensure adequate ventilation for all underground workings to which access is permitted;
- (g) in respect of zones susceptible to particular hazards, draw up and implement an operating plan and procedures to ensure a safe system of work and the protection of workers;
- (h) take measures and precautions appropriate to the nature of a mine operation to prevent, detect and combat the start and spread of fires and explosions; and
- (i) ensure that when there is serious danger to the safety and health of workers, operations are stopped and workers are evacuated to a safe location.

ACT Response

The model Mining Regulations and the WHS laws are consistent with Article 7.

Article 7(a)

Under section 20 of the WHS Act, a person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.

Under section 48 of the WHS Regulation, a PCBU must manage risks to health and safety of a worker associated with remote or isolated work in accordance with the requirements outlined in part 3.1 of the Regulation. In minimising risks to the health and safety of a worker associated with remote or isolated work, a PCBU must provide a system of work that includes effective communication with the worker.

In addition, Codes of Practice provide guidance on relevant industry standards.

ACT planning approval processes would also apply to the development of a mine.

Division 3.2.2 of the WHS Regulation outlines the duties a PCBU has in relation to the general working environment. Section 40 of the WHS Regulation provides that a PCBU must ensure, so far as is reasonably practicable, the layout, maintenance and lighting of the workplace allows for persons to enter, exit and move about without risk to health and safety, both under normal working conditions and in an emergency. A PCBU must also ensure, so far as is reasonably practicable, work areas have adequate space, lighting and ventilation and that floors and other surfaces are designed, installed and maintained to allow work to be carried out without risk to health and safety. Other duties included in this section require a PCBU to ensure, so far as is reasonable practicable, workers carrying out work in extremes of heat or cold are able to carry out work without risk to health and safety and work in relation to or near essential services does not give rise to a risk to health and safety of persons at the work place.

Under section 610(2)(c) of the model Mining Regulation, the safety management system for a mine, which must be designed to be used as the mine operator's primary means of ensuring, so far as reasonably practicable, the health and safety of workers at the mine, must be in place during the construction of the mine site .

In addition, under section 675P of the model Mining Regulation, the mine operator must ensure that a detailed survey plan of the mine is prepared by a competent person. The mine survey plan must show the following (if they are present at the mine):

- the workings of the mine, including disused workings and bore holes;
- the location of electrical installations;
- the location of telephones and other fixed plant associated with the radio and telecommunications systems;
- water dams and tailings dams;
- places for the storage of hydrocarbons or explosives; and
- points of entry and exit, including emergency exits.

Under the model Mining Regulation, the mine survey plan must be made available for inspection by the Regulator (s. 675R).

The Emergency Plan for a mine, which forms part of the Safety Management System, must address all aspects of emergency response, including by ensuring the establishment of a system that enables all persons at the mine to be promptly located (s. 661(2)(a), model Mining Regulation). The emergency plan must also details of on-site communication systems (sch. 22).

Article 7(b)

Under section 626 of the model Mining Regulation, the mine operator of a mine must identify all principal mining hazards at the mine and, in relation to each principal mining hazard identified, conduct a risk assessment that involves a comprehensive and systematic investigation and analysis of all aspects of risk to health and safety associated with the hazard. The purpose of this Regulation is to ensure workers can perform the work assigned to them without risk to themselves or others.

A principal mining hazard management plan must (among other things) be documented and set out and expressed in a way that is readily understandable by persons who use (so far as is reasonable practicable) and include:

- provide for the management of all aspects of risk control in relation to the relevant principal mining hazard; and
- describe the nature of the principal mining hazard; and
- how the principal mining hazard relates to other hazards at the mine;
- describe the analysis methods used in identifying the principal mining hazard; and
- specify all control measures to be implemented to manage risks to health and safety associated with the principal mining hazard (s. 627).

The principal mining hazard management plan forms part of the safety management system for the mine. Further information on the requirements of principal mining hazard management plans under WHS Legislation is outlined in Article 7(g).

The safety management system for a mine must state the mine operator's health and safety policy, including broad aims in relation to the safe operation of the mine, describe the management structure for the management of work health and safety at the mine (s. 621) and provide a comprehensive and integrated system for the management of all aspects of risks to health and safety in relation to the operation of the mine (s. 620).

The Safety Management System must be in place at the time of the construction of the mine site (s. 610(2)(c) and during the decommissioning or closure of the mine site (s. 610(2)(d).

In addition, to ensure the safety management system for a mine remains effective, the mine operator must maintain it (s. 623) and must also ensure that it is reviewed at least once every 3 years, when a control measure is revised and as necessary (s. 624).

Under section 673 of the Regulation, the mine operator of a mine must ensure that, before a worker commences work at the mine, the worker is given a summary of the safety management system for the mine that is relevant to the worker's work at the mine and is informed of the right to see the documented safety management. Where a safety management system is revised under the Regulation, the mine operator must ensure, so far as is reasonably practicable, that each worker at the mine is made aware of any revision that is relevant to work being carried out by the worker.

In addition, section 674 of the model Mining Regulation provides that the mine operator must ensure that each worker at the mine is provided with suitable and adequate information, training and instruction in relation to:

- all hazards associated with the work being carried out by the workers;
- the implementation of risk control measures relating to the work being carried out by the worker; and
- the safety role for workers in relation to principal mining hazards (and implemented under section 675N of the Regulation).

The mine operator must also ensure that information, training and instruction provided to workers under this section is reviewed and, as necessary, revised to ensure that it remains relevant and effective (s. 675A).

Further information on requirements to provide information, training and instruction to workers under WHS Legislation is outlined in Article 10(a).

The model Mining Regulation provides that “mining operations” includes, among other activities, constructing a site where activities in connection with mining activities are carried out or are carried out in the vicinity of the site (s. 610(2)(c) and activities associated with the decommissioning, making safe or closure of an extraction site or exploration site(s. 610(2)(d).

Section 632 of the model Mining Regulation provides that if a mine operator of a mine closes the mine or if mining operations at a mine are suspended, the mine operator must, at the time of the closure or suspension, ensure, so far as is reasonably practicable, that the mine is safe, including by being secure against unauthorised entry by any person.

Section 20 of the WHS Act provides that a PCBU at a workplace must ensure, so far as is reasonable practicable, that the layout of the workplace allows, and the workplace is maintained so as to allow, for persons to enter and exit and to move about without risk to health and safety, both under normal working conditions and in an emergency.

In addition, section 28 of the WHS Act provides that, while at work, a worker must, take care for his or her own health and safety and take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons.

Article 7(c)

Schedule 19 of the model Mining Regulation sets out a number of matters a mine operator must consider in assessing the impact on the safety of workers and others in current and proposed mining operations when preparing a principal mining hazard management plan. Under this schedule, matters that are to be considered in developing the control measures to manage the risks of ground or strata instability include:

- the local geographical structure;
- the geotechnical characteristics of the rocks and soil, including the effects of time, oxidation and water on rock support and stability; and
- the proposed and existing mining operations, including the nature and number of excavations, the number and size of permanent or temporary voids or openings, backfilling of mined areas and stopes, abutments, periodic weighting and windblast.

Article 7(d)

As stated in the overview, the ACT does not have any underground mines.

Article 7(e)

Part 3.1 of the WHS Regulation outlines the responsibilities of a duty holder has in terms of managing risks to health and safety. A duty holder, in managing risks to health and safety, must identify reasonably foreseeable hazards that could give rise to risks to health and safety (s. 34) and, so far as is reasonably practicable, eliminate (s. 35(a)) or minimise (s. 35(b)) risks to health

and safety in accordance with the hierarchy of control measures outlines in section 36 of the Regulation.

The model Mining Regulation provides that a PCBU at a mine must manage risks to health and safety associated with mining operations at the mine (in accordance with part 3.1 of the WHS Regulation) and must ensure that a risk assessment is conducted by a competent person (s. 617).

In addition, section 618 of the model Mining Regulation provides that a PCBU at a mine must review and, as necessary, revise control measures (implemented under section 617 of the Regulation) in the following circumstances:

- an audit of the effectiveness of the safety management system for the mine indicates a deficiency in a control measure;
- a worker is moved from a hazard or assigned to different work in response to a recommendation contained in a health monitoring report provided under part 10.3 of the Regulation; or
- an incident requiring notified under section 675S of the Regulation occurs.

Further, the model Mining Regulation provides that the safety management system for the mine describe arrangements in place for health monitoring (s 621(l)) and all other monitoring and assessment and regular inspection of the working environment of the mine to be carried out for the purposes of WHS Legislation(s 621(p)).

Under part 10.3 of the model Mining Regulation, the mine operator must ensure that health monitoring is provided to a worker at a mine engaged to carry out work at a mine if there is significant risk of an adverse effect on the worker's health because of the worker's exposure to a hazard associated with mining and there are valid techniques are available to detect that effect on the worker's health. The health monitoring must be carried out at intervals determined by a registered medical practitioner with experience in health monitoring (s. 675C(2)).

More information regarding the requirements of health monitoring under WHS Legislation is outlined in Article 11.

Article 7(f)

As stated in the overview, the ACT does not have any underground mines.

Article 7(g)

Under section 626 of the model Mining Regulation, the mine operator of a mine must identify all principal mining hazards at the mine and, in relation to each principal mining hazard identified, conduct a risk assessment that involves a comprehensive and systematic investigation and analysis of all aspects of risk to health and safety associated with the identified hazard. The mine operator must prepare a mining hazard management plan for each principal mining hazard at the mine, having regard to the matters set out in schedule 19 of the Regulation (which outlines additional matters to be considered in the preparation of principal mining hazard management plans).

A principal mining hazard management plan must (among other things):

- be documented; and
- provide for the management of all aspects of risk control in relation to the relevant principal mining hazard; and
- so far as is reasonably practicable, be set out and expressed in a way that is readily understandable by persons who use it; and
- describe the nature of the principal mining hazard to which the plan relates; and
- describe how the principal mining hazard relates to other hazards at the mine; and
- specify all control measures to be implemented to manage risks to health and safety associated with the principal mining hazard; and
- describe the arrangements in place for providing the information, training and instruction required by section 39 of the WHS Regulation in relation to the principal mining hazard (s. 626, 627).

The principal mining hazard management plan forms part of the safety management system outlined in section 621 of the model Mining Regulation.

Article 7(h)

Under section 53 of the WHS Regulation, a PCBU at a workplace must ensure that, if flammable or combustible substances are kept at the workplace, the substances are kept at the lowest practicable quantity for the workplace.

Under section 626 of the model Mining Regulation, the mine operator of a mine must identify all principal mining hazards at the mine and conduct a risk assessment that involves a comprehensive and systematic investigation and analysis of all aspects of risk to health and safety associated with the hazard identified. The mine operator must also prepare a principal mining hazard management plan for each principal mining hazard identified, having regard to the matters set out in schedule 19 of the Regulation (s. 627).

A “principal mining hazard” is defined in the model Mining Regulation to include any activity, process, procedure, plant, structure, substance, situation or other circumstance relating to the conduct of mining operations that has a reasonable potential to result in multiple deaths in a single incident or a series of recurring incidents, including in relation to fire or explosion (s. 612). Depending on the nature of the mine operation, the principal mining hazard management plan for fire or explosion prepared by the mine operator would therefore include appropriate measures and precautions to prevent, detect and combat the start and spread of fires and explosions (Schedule 19).

Schedule 19 of the model Mining Regulation sets out a number of matters a mine operator must consider in assessing the impact on the safety of workers and others in current and proposed mining operations when preparing a principal mining hazard management plan. Under this schedule, matters that must be considered in developing the control measures to manage the risks of fire and explosion include:

- the potential sources of flammable, combustible and explosive substances and materials, both natural and introduced, including gas, dust, fuels, solvents and timber;
- the potential sources of ignition, fire or explosion, including plant, electricity, static electricity, spontaneous combustion, lighting, hot work and other work practice;

- the potential for propagation of fire or explosion to other parts of the mine.

Article 7(i)

Under section 621(h) of the model Mining Regulation, the safety management system, outlined in part 10.2 of the Regulation, must describe the procedures and conditions under which person at the mine or a part of the mine are to be withdrawn to a place of safety and to remain withdrawn as a precautionary measure where a risk to health and safety warrants that withdrawal.

Under section 195 of the WHS Act, where a WorkSafe ACT inspector reasonably believes that an activity is occurring, or may occur, at a workplace that involves, or will involve, a serious risk to the health or safety of a person from an immediate or imminent exposure to a hazard, the inspector may issue a prohibition notice, prohibiting the person the carrying on of the activity, or the carrying on of the activity in a specified way, until the inspector is satisfied that the matters that give or will give rise to the risk have been remedied.

In addition, section 84 of the WHS Act provides that a worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

Further, section 85 of the WHS Act provides that a health and safety representative may direct a worker, who is in a work group represented by the representative, to cease work if the representative has reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

Section 43 of the WHS Regulation places a duty on a PCBU at a workplace to prepare, maintain and implement an emergency plan for the workplace. The PCBU must ensure the emergency plan provides emergency procedures for the following:

- an effective response to an emergency; and
- evacuation procedures; and
- notifying emergency service organisations at the earliest opportunity; and
- medical treatment and assistance; and
- effective communication between the person authorised by the PCBU to coordinate the emergency response and all persons at the workplace.

In addition to section 43 of the WHS Regulation, the model Mining Regulation places a duty on the mine operator of a mine to prepare an emergency plan for the mine, in accordance with division 5, subdivision 1 (s. 661), and to immediately implement the emergency plan in the event of an emergency (s. 663). The emergency plan must address all aspects of emergency response, including by ensuring the establishment of a system that enables all persons at the mine to be promptly located and the provision of adequate rescue equipment (s. 661).

Under section 20 of the WHS Act, a PCBU at a workplace must ensure, so far as is reasonable practicable, that the layout of the workplace allows, and the workplace is maintained so as to

allow, for persons to enter and exit and to move about without risk to health and safety, both under normal working conditions and in an emergency.

Article 8

The employer shall prepare an emergency response plan, specific to each mine, for reasonably foreseeable industrial and natural disasters.

ACT Response

The model Mining Regulations and the WHS laws are consistent with Article 8.

Under section 43 of the WHS Regulation, a PCBU at a workplace must ensure that an emergency plan is prepared for the workplace that provides for the following:

- (a) emergency procedures, including –
 - (i) an effective response to an emergency; and
 - (ii) evacuation procedures; and
 - (iii) notifying emergency service organisations at the earliest opportunity; and
 - (iv) medical treatment and assistance; and
 - (v) effective communication between the person authorised by the PCBU to coordinate the emergency response and all persons at the workplace;
- (b) testing of the emergency procedures, including the frequency of testing;
- (c) information, training and instruction to relevant workers in relation to implementing the emergency response procedures.

In preparing an emergency plan for a workplace, the PCBU must consider all relevant matters, including the following:

- (a) the nature of the work being carried out at the workplace;
- (b) the nature of the hazards at the workplace;
- (c) the size and location of the workplace; and
- (d) the number and composition of the workers and other persons at the workplace.

The PCBU must implement the emergency plan for the workplace in the event of an emergency (s. 43)(4)) and maintain the emergency plan so that it remains effective (s. 43)(2)).

In addition to section 43 of the WHS Act, the model Mining Regulation places a duty on the mine operator of a mine to prepare an emergency plan for the mine, in accordance with division 5, subdivision 1 (s. 661), and to immediately implement the emergency plan in the event of an emergency (s. 663). The emergency plan must:

- (a) address all aspects of emergency response, including by ensuring:
 - (i) the establishment of a system that enables all persons at the mine to be promptly located; and
 - (ii) the provision of adequate rescue equipment; and
 - (iii) that an adequate number of persons trained in the use of rescue equipment are available to respond effectively to the emergency if a person is working at the mine; and
 - (iv) the provision of adequate patient transport if a person is working at a mine; and
- (b) include all matters specified in Schedule 22 of the Regulation; and
- (c) so far as is reasonable practicable, be set out and expressed in a way that is readily understandable by persons who use it.

Schedule 22 of the model Mining Regulation, which outlines additional matters to be included in an emergency plan for a mine, specifies that the emergency management plan for the mine must also include on site and off site emergency arrangements. On-site emergency resources required include first aid equipment, facilities, services and personnel and off-site emergency resources includes access to additional external resources.

In addition, the mine operator must ensure that all resources, including rescue equipment, specified in the emergency plan for the mine are provided in accordance with the plan and all equipment, including rescue equipment, specified in the emergency plan is maintained in good working order (s. 665).

Section 662 of the model Mining Regulation includes a consultation process, when preparing the emergency plan, with the primary emergency services with the responsibility for the area in which the mine is located and, if required, any other emergency services organisation (including any mines rescue organisation) and the local authority. The mine operator must ensure that a copy of the emergency plan is available on request to any emergency service organisation consulted under section 662 (s. 664).

Under section 674(d) of the model Mining Regulation, the mine operator must ensure that each worker at the mine is provided with suitable and adequate information, training and instruction in relation to the emergency plan for the mine. The mine operator must also ensure that a visitor who enters the mine with the authority of the mining operator is, as soon as practicable, instructed in the actions the visitor should take if the emergency plan for the mine is implemented while the visitor is at the mine(675)(c).

Under section 667 of the model Mining Regulation, if a risk control measure is revised under section 38 or 618, the mine operator must ensure that the emergency plan is reviewed and, as necessary, revised in relation to all aspects of risk control addressed by the revised control measure.

Article 9

Where workers are exposed to physical, chemical or biological hazards the employer shall:

- (a) inform the workers, in a comprehensible manner, of the hazards associated with their work, the health risks involved and relevant preventive and protective measures;
- (b) take appropriate measures to eliminate or minimize the risks resulting from exposure to those hazards;
- (c) where adequate protection against risk of accident or injury to health including exposure to adverse conditions cannot be ensured by other means, provide and maintain at no cost to the worker suitable protective equipment, clothing as necessary and other facilities defined by national laws or regulations; and
- (d) provide workers who have suffered from an injury or illness at the workplace with first aid, appropriate transportation from the workplace and access to appropriate medical facilities.

ACT Response

The ACT is compliant with Article 9 of Convention 176.

Part 3.1 of the WHS Regulation outlines the responsibilities of a duty holder has in terms of managing risks to health and safety. A duty holder, in managing risks to health and safety, must identify reasonably foreseeable hazards that could give rise to risks to health and safety (s. 34).

Article 9(a)

Section 674 of the model Mining Regulation provides that the mine operator must ensure that each worker at the mine is provided with suitable and adequate information, training and instruction in relation to the following:

- (a) all hazards associated with the work being carried out by the workers;
- (b) the implementation of risk control measures relating to the work being carried out by the worker, including controls in relation to fatigue, the consumption of alcohol and the use of drugs;
- (c) the content and implementation of the safety management system for the mine;
- (d) the emergency plan for the mine; and
- (e) the safety role for workers implemented under section 675N of the Regulation.

The PCBU must also ensure, so far as is reasonably practicable, that the information, training and instruction provided under this section is provided in a way that is readily understandable by any person to whom it is provided.

In addition, the mine operator must ensure that information, training and instruction provided to workers under section 674 of the model Mining Regulation is reviewed and, as necessary, revised to ensure that it remains relevant and effective (s. 675A).

Further, under the WHS Regulation, the duty holder must manage the risk to the health and safety of workers in relation to hearing loss associated with noise (part 4.1) and confined spaces (part 4.3).

Article 9(b)

Under section 617 of the model Mining Regulation, a PCBU at a mine must, so far as is reasonably practicable, identify all reasonably foreseeable hazards associated with mining operations and, so far as is reasonably practicable, minimise risks to health and safety associated with mining operations at the mine by implementing specified control measures in accordance with the part 3.1 of the WHS Regulation.

Please refer to Article 6 for further information on the responsibilities of a duty holder, under WHS legislation, relating to the implementation of measures to eliminate or minimise the risks resulting from exposure to hazards.

Article 9(c)

Where personal protective equipment (PPE) is to be used to minimise a risk to health and safety in relation to work at a workplace in accordance with the hierarchy of control measures (outlined in s. 36 of the WHS Regulation), the PCBU who directs the carrying out of work must provide PPE to workers at the workplace, unless the personal protective equipment has been provided by another PCBU (s. 44). The PCBU must ensure the PPE is selected to minimise risk to health and safety and is maintained, repaired or replaced so that it continues to minimise risk to the worker who uses. The PCBU must also provide the worker with information, training and instruction in the proper use, wearing, storage and maintenance of the PPE.

Article 9(d)

Division 5 of the model Mining Regulation places a duty on the mine operator of a mine to prepare an emergency plan for the mine. The emergency plan must address all aspects of emergency response, including by ensuring the provision of adequate patient transport if a person is working at a mine.

Under schedule 22 of the model mining regulation, the emergency plan must include on-site emergency resources, such as first aid equipment, facilities and services and trained personnel, as well as off-site emergency resources including access to additional external resources (e.g. mines rescue services).

Article 8 provides further information regarding the requirements of an emergency plan under WHS legislation.

Under section 42 of the Work Health and Safety Regulation 2011 (WHS Regulation) (ACT), a PCBU at a workplace must ensure the provision of first-aid equipment for the workplace and that each worker at the workplace has access to the equipment and access to facilities for the administration of first aid. A PCBU must also ensure an adequate number of workers are trained to administer first-aid at the workplace or workers have access to an adequate number of other persons who have been trained to administer first-aid.

In exercising their duty to provide first-aid, the PCBU must also have regard to all relevant matters including, the nature of the work being carried out, the nature of hazards and the size and location of the workplace as well as the number and composition of the workers and other persons at the workplace.

The ACT has adopted the national model First Aid in the Workplace Code of Practice. The Code provides further guidance on how to provide adequate first aid facilities and includes information on first-aid kits, procedures (including transport), facilities (e.g. first aid rooms, eye wash or shower equipment, health or medical centres) and training for first aiders.

Article 10

The employer shall ensure that:

- (a) adequate training and retraining programmes and comprehensible instructions are provided for workers, at no cost to them, on safety and health matters as well as on the work assigned;
- (b) in accordance with national laws and regulations, adequate supervision and control are provided on each shift to secure the safe operation of the mine;
- (c) a system is established so that the names of all persons who are underground can be accurately known at any time, as well as their probable location;
- (d) all accidents and dangerous occurrences, as defined by national laws or regulations, are investigated and appropriate remedial action is taken; and
- (e) a report, as specified by national laws and regulations, is made to the competent authority on accidents and dangerous occurrences.

ACT Response

The ACT is compliant with Article 10 through relevant provisions of both the WHS Act and DS Act and supporting law and practice.

Article 10(a)

The principal duty of care outlined at section 19 of the WHS Act requires a PCBU to ensure, so far as is reasonably practicable, the health and safety of workers engaged or caused to be engaged by them. As a part of this duty, the PCBU must ensure, do far as is reasonably practicable, the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking. These provisions protect all people who carry out work in any capacity for a business or undertaking, regardless of where the work is carried out.

Where a PCBU has a duty under section 19 of the WHS Act to ensure the provision of information, training and instruction, the PCBU must, under section 39 of the WHS Regulation, ensure that the information, training and instruction provided to a worker is suitable and adequate having regard to –

- (a) the nature of the work carried out by the worker; and
- (b) the nature of the risks associated with the work at the time the information, training or instruction is provided; and
- (c) the control measures implemented.

The PCBU must also ensure, so far as is reasonably practicable, that the information, training and instruction provided under this section is provided in a way that is readily understandable by any person to whom it is provided.

Division 6 of the model Mining Regulation outlines the responsibilities of duty holders in terms of providing workers with information, training and instruction. Under section 673 of the

Regulation, the mine operator of a mine must ensure that, before a worker commences work at the mine, the worker is given a summary of the safety management system for the mine that is relevant to the worker's work at the mine and is informed of the right to see the documented safety management. The mine operator must ensure that the documented safety management system is available on request to a worker at the mine. In addition, where a safety management system is revised under the Regulation, the mine operator must ensure, so far as is reasonably practicable, that each worker at the mine is made aware of any revision that is relevant to work being carried out by the worker.

Section 674 of the model Mining Regulation (which applies in addition to section 39 of the WHS Act) provides that the mine operator must ensure that each worker at the mine is provided with suitable and adequate information, training and instruction in relation to the following:

- (f) all hazards associated with the work being carried out by the workers;
- (g) the implementation of risk control measures relating to the work being carried out by the worker, including controls in relation to fatigue, the consumption of alcohol and the use of drugs;
- (h) the content and implementation of the safety management system for the mine;
- (i) the emergency plan for the mine; and
- (j) the safety role for workers implemented under section 675N of the Regulation.

The mine operator must also ensure that information, training and instruction provided to workers under sections 673 and 674 of the model Mining Regulation is reviewed and, as necessary, revised to ensure that it remains relevant and effective (s. 675A).

Further, under section 675B, the mine operator of a mine must make a record of any training provided to a worker under section 674 and must keep the record while the worker remains engaged at the mine.

Under section 44 of the WHS Regulation, where a PCBU provides a worker with personal protective equipment (PPE) as a risk control measure under section 36 of the Regulation, the PCBU must also provide the worker with information, training and instruction in the proper use, wearing, storage and maintenance of the PPE.

Further, under section 76 of the WHS Regulation, a PCBU must ensure that a worker, or any person supervising a worker, who, in carrying out work for the business or undertaking could enter or work in a confined space or carry out any function in relation to work in a confined space or the emergency procedures established under section 74 of the Regulation (but who is not required to enter the space) is provided with suitable and adequate information, training and instruction in relation to the following:

- (a) the nature of all hazards relating to a confined space;
- (b) the need for, and the appropriate use of, control measures to control risks to health and safety associated with those hazards;
- (c) the selection, fit, use, wearing, testing, storage and maintenance of any PPE;
- (d) the contents of any confined space entry permit that may be issued in relation to work carried out by the worker in a confined space;
- (e) emergency procedures.

The PCBU must ensure that a record of all training provided to a worker under section 76 is kept for two years (s. 76(2)).

Article 10(b)

The Safety Management System outlined in section 621 of the model Mining Regulation includes a requirement to describe the arrangements in place for the supervision needed to protect workers and other persons at the mine from risks to their health and safety from work carried out at the mine (including acting arrangements during absences and the competency requirements for supervisory positions) (s. 621(k)).

Under section 629 of the model Mining Regulation, the mine operator of a mine (at which more than one shift is worked each day) must implement a system that ensures that each of the following occurs as soon as practicable at the commencement of each shift:

- (a) the supervisor of each outgoing shift provides a written report to the supervisor of the incoming shift, in relation to the state of the mine workings and plant and any other matters that relate to work health or safety; and
- (b) the supervisor of the incoming shift communicates the content of the report to the workers on the incoming shift.

In addition, as part of the principal duty of care imposed on a PCBU under section 19 of the WHS Act, the PCBU must ensure, so far as is reasonably practicable, the provision of supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking. Under section 84 of the WHS Regulation, this includes the duty of a PCBU to ensure direct supervision of a person carrying out high risk work.

Under section 44 of the WHS Act, a person must not carry out work, or a PCBU direct a person to carry out work at a workplace if a regulation requires the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience and the worker or the person supervising them does not have the prescribed qualifications or experience.

Article 10(c)

As stated in the Overview, the ACT does not have any underground mines.

Article 10(d)

Under section 38 of the WHS Act, a duty holder must review and, as necessary, revise control measures implemented under the WHS Regulation so as to maintain, so far as is reasonably practicable, a work environment that is without risk to health and safety. In addition, the duty holder must review and, as necessary, revise a control measure in the following circumstances:

- the control measure does not control the risk it was implemented to control so far as is reasonably practicable;
- before a change at the workplace that is likely to give rise to a new or different risk to health or safety that the measure may not effectively control;
- a new relevant hazard or risk is identified;

- the results of consultation by the duty holder under the WHS Act or this regulation indicate that a review is necessary; or
- a health and safety representative requests a review under 38(4) of the Act.

Further, under section 618 of the model Mining Regulation, a PCBU at a mine must review and, as necessary, revise control measures (implemented under section 617 of the Regulation) in the following circumstances:

- an audit of the effectiveness of the safety management system for the mine indicates a deficiency in a control measure;
- a worker is moved from a hazard or assigned to different work in response to a recommendation contained in a health monitoring report provided under part 10.3 of the Regulation; or
- an incident requiring notified under section 675S of the Regulation occurs.

Under section 675T of the model Mining Regulation, the mine operator of a mine must give WorkSafe Act a quarterly work health and safety report in accordance with the Regulation. The report must be given at the times or intervals (including annually) and in the manner and form required by the regulator and contain information specified in schedule 24 (i.e. information relating to the number of incidents and medical treatment injuries etc.).

The WHS Act provides WorkSafe ACT inspectors with certain powers to help prevent PCBUs from hindering an investigation, by the Regulator, into an incident or dangerous occurrence.

Under section 163 of the WHS Act, WorkSafe ACT inspectors may at any time enter a place that is, or that the inspector reasonably suspects is, a workplace. Pursuant to section 165 of the WHS Act, an inspector who enters a workplace under section 163 may do one or more of the following:

- (a) inspect, examine and make inquiries at the workplace;
- (b) inspect and examine anything (including a document) at the workplace;
- (c) bring to the workplace and use any equipment or materials that may be required;
- (d) take measurements, conduct tests and make sketches or recordings;
- (e) take and remove for analysis a sample of any substance or thing without paying for it;
- (f) require a person at the workplace to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e); and
- (g) exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of the Act.

Also under section 165 of the WHS Act, a person required to give reasonable help under subsection (1)(f) must not, without reasonable excuse, refuse or fail to comply with the requirement and, under section 188, a person must not intentionally hinder or obstruct an inspector in exercising his or her compliance powers, or induce or attempt to induce any other person to do so.

In addition, section 39 of the WHS Act requires the person with management or control of a workplace at which a notifiable incident has occurred must ensure, so far as reasonably practicable, the site where the incident occurred is not disturbed until a WorkSafe ACT inspector arrives at the site or any earlier time that an inspector directs. This does not prevent

any action that is essential to make the site safe, is associated with a police investigation, or action to assist an injured or remove a deceased person.

Article 10(e)

Part 3 of the WHS Act outlines incident notification requirements under the Act. Under section 38 of the WHS Act, a PCBU must ensure that the regulator is notified (either by telephone or in writing) immediately after becoming aware that a notifiable incident (the serious injury, illness or death of a person or a dangerous incident) arising out of the conduct of the business or undertaking has occurred.

The PCBU must keep a record of each notifiable incident for at least 5 years from the day that notice of the incident is given to the regulator (s. 38).

Besides notifiable incidents, section 675S of the model Mining Regulation provides that the mine operator of a mine must take all reasonable steps to ensure that the regulator is notified as soon as possible after becoming aware of an incident arising out of the carrying out of mine operations at the mine. The notification must be in writing, in a form required by the regulator, and in the case of an incident that results in an illness or injury, contain the details specified in Schedule 23.

Under the model Mining Regulation, incident means an incident that:

- (a) results in illness or injury that requires medical treatment within the meaning of item 13.2 of schedule 24; or
- (b) is a high potential incident or event referred to in section 37(a) to (1) of the WHS Act that would have been a dangerous incident under section 37 if a person were in the vicinity at the time when the incident or event occurred an in usual circumstances a person could have been in that vicinity at that time.

Under section 675T of the model Mining Regulation, the mine operator of a mine must give the regulator a quarterly work health and safety report in accordance with the Regulation. The report must be given at the times or intervals (including annually) and in the manner and form required by the regulator and contain information specified in schedule 24. Matters to be included in the quarterly work health and safety reports include, for the reporting period, details of the following:

- the name of the mine holder and the mine operator for the mine;
- the location of the mine and a description of the *primary commodity* processed;
- the average number of workers who worked at the mine site and the total number of hours (including additional shifts and overtime) worked;
- the total number of incidents that occurred and the total number incidents that resulted in the inability of a worker to work for one day or more (not including the incident day);
- the total number of days (not including the incident day) lost from work by workers;
- the total number of workers placed on restricted duties as a result of incidents and the total number of days on which workers carried out restricted duties;
- the total number of injuries and illnesses of workers arising from incidents that required medical treatment (does not include diagnostic procedures, first aid or therapeutic measures taken solely for preventative purposes) but did not result in the inability to worker for one day or more (not including the incident day); and

- the total number of deaths that occurred as a result of incidents.

Under section 675U of the model Mining Regulation, the mine operator of a mine must keep a mine record for the mine. This mine record must contain:

- (a) a record of any notice issued in relation to the mine under part 10 of the WHS Act; and
- (b) a copy of any provisional improvement notice issued in relation to the mine under division 7 of part 5 of the WHS Act; and
- (c) a record of every incident notified to the regulator under part 3 of the WHS Act or under section 675S; and
- (d) a summary of all records kept under section 619; and
- (e) each report under section 629 by a shift supervisor at the mine.

Article 11

On the basis of general principles of occupational health and in accordance with national laws and regulations, the employer shall ensure the provision of regular health surveillance of workers exposed to occupational health hazards specific to mining.

ACT Response

The model Mining Regulations and the WHS laws are compliant with Article 11.

Part 10.3 of the model Mining Regulation outlines the duties a mine operator has in relation to health monitoring. Under section 675D of the Regulation, the mine operator of a mine must ensure that health monitoring is provided to a worker at a mine engaged to carry out work at a mine if:

- (a) there is significant risk of an adverse effect on the worker's health because of the worker's exposure to a hazard associated with mining; and
- (b) valid techniques are available to detect that effect on the worker's health.

A mine operator who is required to ensure that health monitoring is provided to a worker must give information about the health monitoring requirements to:

- (a) a person who is likely to be engaged to carry out work that triggers the requirement for health monitoring; and
- (b) a worker at the mine, before the worker commences work that triggers the requirement for health monitoring (s. 675D).

Under section 675F of the model Mining Regulation, the operator of a mine who engages a worker at the mine must pay all expenses relating to health monitoring referred to in Part 10.3. If the mine operator has not engaged a worker at the mine, the mine operator must ensure that the PCBU that engaged the worker pays all expenses relating to health monitoring.

The health monitoring must be carried out at intervals determined by a registered medical practitioner with experience in health monitoring (s. 675C(2)).

Article 12

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

ACT Response

The model Mining Regulations and the WHS laws are compliant with Article 12.

Section 16 of the WHS Act provides that more than one person can concurrently have the same duty and that each duty-holder must comply with that duty to the standard required by the Act even if another duty-holder has the same duty. If more than one person has a duty for the same matter, each person retains responsibility for the person's duty in relation to the matter and must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity. Further, each person with the duty must, so far as is reasonably practicable, consult, cooperate and coordinate activities with all other persons who have a duty in relation to the same matter (s. 46).

Section 14 of the WHS Act also provides that where a person has a duty under the Act, that duty cannot be transferred to another person.

Section 272 of the WHS Act provides that an agreement or contract that allows to transfer to another person any duty owed under this Act is not valid.

Under section 617 of the model Mining Regulation, a PCBU at a mine must, so far as is reasonably practicable, identify all reasonably foreseeable hazards associated with mining operations and, so far as is reasonably practicable, minimise risks to health and safety associated with mining operations at the mine by implementing specified control measures in accordance with the part 3.1 of the WHS Regulation.

Under section 620 of the model Mining Regulation, the mine operator must establish a safety management system for the mine, in accordance with subdivision 2 of the Regulation, and must implement the safety management system for the mine, so far as is reasonably practicable.

Under the model Mining Regulation, the safety management system for a mine must state the mine operator's health and safety policy, including broad aims in relation to the safe operation of the mine, describe the management structure for the management of work health and safety at the mine (s. 621) and provide a comprehensive and integrated system for the management of all aspects of risks to health and safety in relation to the operation of the mine (s. 620).

Further, if a contractor is working or likely to work at the mine, the safety management system for the mine must describe the control measures that will be used to control risks to health and

safety associated with the contractor's work at the mine. This includes a process for assessing a contractor's health and safety policies and procedures and the integration of these policies and the contractor's work management system with the safety management for the mine, as well as arrangements for monitoring and evaluation of compliance with the safety management system (s. 621(f)).

B. RIGHTS AND DUTIES OF WORKERS AND THEIR REPRESENTATIVES**Article 13**

1. Under the national laws and regulations referred to in Article 4, workers shall have the following rights:

- (a) to report accidents, dangerous occurrences and hazards to the employer and to the competent authority;
- (b) to request and obtain, where there is cause for concern on safety and health grounds, inspections and investigations to be conducted by the employer and the competent authority;
- (c) to know and be informed of workplace hazards that may affect their safety or health;
- (d) to obtain information relevant to their safety or health, held by the employer or the competent authority;
- (e) 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; and
- (f) to collectively select safety and health representatives.

2. The safety and health representatives referred to in paragraph 1(f) above shall, in accordance with national laws and regulations, have the following rights:

- (a) to represent workers on all aspects of workplace safety and health, including where applicable, the exercise of the rights provided in paragraph 1 above;
- (b) to:
 - (i) participate in inspections and investigations conducted by the employer and by the competent authority at the workplace; and
 - (ii) monitor and investigate safety and health matters;
- (c) to have recourse to advisers and independent experts;
- (d) to consult with the employer in a timely fashion on safety and health matters, including policies and procedures;
- (e) to consult with the competent authority; and
- (f) to receive, relevant to the area for which they have been selected, notice of accidents and dangerous occurrences.

3. Procedures for the exercise of the rights referred to in paragraph 1 and 2 above shall be specified:

- (a) by national laws and regulations; and
- (b) through consultations between employers and workers and their representatives.

4. National laws and regulations shall ensure that the rights referred to in paragraphs 1 and 2 above can be exercised without discrimination or retaliation.

ACT Response

The model Mining Regulations and the WHS laws are compliant with Article 13.

The protections against discrimination in employment and occupation outlined in the Commonwealth *Fair Work Act 2009* general protections and unlawful termination provisions apply wholly to the ACT.

Article 13(1)(a)

Under division 6.1 of the WHS Act, it is an offence to engage in discriminatory conduct if a worker raises, has raised or proposes to raise an issue or concern about work health and safety with the PCBU, an inspector, a health and safety representative or any other person who has a duty under the Act in relation to the matter (s. 106(h)).

Article 13(1)(b)

Workers can raise concerns about work health and safety with their health and safety representatives. Under the section 68 of the WHS Act, health and safety representatives for a work group have the power to investigate complaints from members of the work group relating to work health and safety and to inquire into anything that appears to be a risk to the health or safety of workers in the work group, arising from the conduct of the business or undertaking.

Under section 618 of the model Mining Regulation, a health and safety representative for workers at the mine may request a review of a control measure at a mine if the representative reasonably believes that:

- one of the following circumstances affects or may affect the health and safety of a member of the work group represented by the work health and safety representative:
 - the control measure does not control the risk it was implemented to control so far as is reasonably practicable;
 - before a change at the workplace that is likely to give rise to a new or different risk to health or safety that the measure may not effectively control;
 - a new relevant hazard or risk identified; or
 - the results of consultation by the duty holder under the WHS Act or WHS Regulation indicate that a review is necessary;
- an audit of the effectiveness of the safety management system for the mine indicates a deficiency in a control measure;
- a worker is moved from a hazard or assigned to different work in response to a recommendation contained in a health monitoring report provided under part 10.3 of the Regulation; or
- where an incident requiring notified under section 675S of the Regulation occurs.

Article 13(1)(c)

Under the section 674 of the model Mining Regulation, a mine operator must ensure that each worker at the mine is provided with suitable and adequate information, training and instruction in relation to all hazards associated with mining operations. The mine operator must also

ensure that information, training and instruction provided to workers under this section is reviewed and, as necessary, revised to ensure that it remains relevant and effective (s. 675A).

In addition, the principal duty of care outlined at section 19 of the WHS Act requires a PCBU to ensure, so far as is reasonably practicable, the health and safety of workers engaged or caused to be engaged by them. As a part of this duty, the PCBU must ensure, so far as is reasonably practicable, the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking. The PCBU must also ensure, so far as is reasonably practicable, that the information, training and instruction provided under this section is provided in a way that is readily understandable by any person to whom it is provided. These provisions protect all people who carry out work in any capacity for a business or undertaking, regardless of where the work is carried out.

Further information relating to the information, training and instruction requirements under the WHS Act and model Mining Regulation is outlined in Article 10(b).

Article 13(1)(d)

Under section 47 of the WHS Act, a PCBU must, so far as is reasonably practicable, consult with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to work health or safety. Under section 48 of the Act, workers also, have the right to receive relevant information concerning their work health and safety.

Under section 675K of the model Mining Regulation, the mine operator of a mine must take all reasonable steps to ensure that a worker at the mine who is provided with health monitoring is given a copy of the health monitoring report as soon as practicable after the monitoring is carried out.

Under the *Freedom of Information Act 1989* (FOI Act) (ACT), every person has a legally enforceable right to, subject to the Act, obtain access, in accordance with the Act, a document of an agency, or an official document of a Minister, other than an exempt document (s. 10). This right applies to documents held by WorkSafe ACT.

In addition, a person has the right to access documents relating to their personal affairs.

Article 13(1)(e)

Under section 84 of the WHS Act, a worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

A health and safety representative may also direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard (s. 85).

Article 13(1)(f)

Under section 61 of the WHS Act, workers have the right to collectively select health and safety representatives.

Article 13(2)(a)

Section 68 of the WHS Act provides that the powers and functions of a health and safety representative for a work group include representing the workers in the work group in matters relating to work health and safety.

Article 13(2)(b)

Section 68 of the WHS Act provides that the powers and functions of a health and safety representative for a work group are to:

- inspect the workplace or any part of the workplace at which a worker in the work group works;
- accompany an inspector during an inspection of the workplace, or part of the workplace, at which a worker in the work group works;
- monitor the measures taken by the person conducting the relevant business or undertaking or that person's representative in compliance with the Act in relation to workers in the work group;
- investigate complaints from members of the work group relating to work health and safety; and
- inquire into anything that appears to be a risk to the health or safety of workers in the work group, arising from the conduct of the business or undertaking.

Article 13(2)(c)

Under the model WHS Act (s68(2)(g)), a health and safety representative may, wherever necessary, request the assistance of any person.

Article 13(2)(d)

Under section 70 of the WHS Act, the PCBU must consult, so far as is reasonably practicable, on work health and safety matters with any health and safety representative for a work group of workers carrying out work for the business or undertaking.

Article 13(2)(e)

Under section 70 of the WHS Act, a PCBU must:

- permit a health and safety representative for the work group to accompany an inspector during an inspection of any part of the workplace where a worker in the work group works; and
- with the consent of a worker that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between the worker and an inspector.

Article 13(2)(f)

In exercising a power or performing a function, the health and safety representative may receive information concerning the work health and safety of workers in the work group (s. 68(2)(f)).

Article 13(3)(a) and (b)

Procedures for the exercise of the rights referred to in paragraphs 1 and 2 are specified by WHS Act and the WHS Regulation.

Consultations between employers and workers and their representatives are required under section 70 of the WHS Act

Article 13(4)

Division 6.1 of the WHS Act makes it an offence to engage in discriminatory conduct against a worker for exercising work health and safety functions under the Act, including raising health and safety concerns. Discriminatory conduct is defined to mean engaging or proposing to engage in one or more of the following:

- dismissal of a worker; or
 - termination of a contract for services with a worker; or
 - putting a worker to his or her detriment in the engagement of the worker; or
 - altering the position of a worker to the detriment of the worker; or
 - refusing or failing to offer to engage a prospective worker or treating them less favourably than another prospective worker regarding terms of engagement; or
 - terminating a commercial arrangement with another person; or
 - refusing or failing to enter into a commercial arrangement with another person;
- (s. 105).

In addition, the ACT has adopted the 'Work Health and Safety Consultation, Cooperation and Coordination Code of Practice', which provides further guidance on the consultation process under WHS Legislation as well as the and the inclusion of health and safety representatives and safety committees in the consultation process.

Article 14

Under national laws and regulations, workers shall have the duty, in accordance with their training:

- (a) to comply with prescribed safety and health measures;
- (b) to take reasonable care for their own safety and health and that of other persons who may be affected by their acts or omissions at work, including the proper care and use of protective clothing, facilities and equipment placed at their disposal for this purpose;
- (c) to report forthwith to their immediate supervisor any situation which they believe could present a risk to their safety or health or that of other persons, and which they cannot properly deal with themselves; and
- (d) to cooperate with the employer to permit compliance with the duties and responsibilities placed on the employer pursuant to the Convention.

ACT Response

The model Mining Regulations and the WHS laws are compliant with Article 14.

Article 14(a)

Section 28 of the WHS Act outlines the health and safety duties of workers. While at work, a worker must:

- comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with the Act; and
- cooperate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

Under section 30 of the WHS Act, the three levels of offences and penalties for the principal safety duties outlined in sections 31-33 of the WHS Act, and described in Article 16, apply to workers also.

Section 675N of the model Mining Regulation provides that the mine operator must implement a safety role for the workers at the mine that enables them to contribute to the identification of principal mining hazards (in accordance with section 626 of the Regulation) relevant to the work that the workers are or will be carrying out as well as the consideration of control measures for risks associated with principal mining hazards at the mine.

Article 14(b)

Under section 28 of the WHS Act, while at work, a worker must take reasonable care for his or her own health and safety and take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons.

Under section 30 of the WHS Act, the three levels of offences and penalties for the principal safety duties outlined in sections 31-33 of the WHS Act, and described in Article 16, apply to workers also.

Under section 46 of the WHS Regulation, where a PCBU provides a worker with personal protective equipment (PPE) the worker must, so far as the worker is reasonably able, use or wear the equipment in accordance with any information, training or reasonable instruction by the PCBU. In addition, the worker must not intentionally misuse or damage the equipment and must inform the PCBU of any damage to, defect in or need to clean or decontaminate any of the equipment of which the worker becomes aware.

Article 14(c)

Section 28 of the WHS Act broadly addresses this requirement in that workers are required to take reasonable care of their own health and safety; take reasonable care that their acts or omissions do not adversely affect the health and safety of others; and cooperate with any reasonable policy or procedure from the PCBU. A failure to report situations that could present a risk to their safety or health or that of other persons would be a breach of the duty to ensure acts or omissions do not affect health and safety of others.

In addition, section 621(k) of the model Mining Regulation the safety management system for a mine must describe the arrangements for the supervision needed to protect the health and safety of workers and others at the mine.

The safety management system for a mine must also state the mine operator's health and safety policy, including the broad aims for the safe operation of the mine, and describe the systems and procedures and other risk control measures that will be used to control risks to health and safety associated with mining operations at the mine (section 621(a)). A comprehensive policy requiring immediate reporting of an incident will permit attention to a deficiency in the control measures as early as possible.

Industry practice for the health and safety management policy requires that all incidents and near misses are reported as soon as practicable to ensure managers and supervisors are aware of the occurrence and preventative action can be put in place to prevent recurrence

Article 14(d)

Under section 28 of the WHS Act, a worker, while at work, has a duty to:

- comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with the Act; and
- cooperate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

Under the WHS Act, a PCBU must ensure, so far as is reasonably practicable, the health and safety of workers engaged, or caused to be engaged, by the person (s. 19(1)), while a worker must take all reasonable care for his or her own safety while a while at work (s. 28(a)). Under section 46 of the WHS Act, if more than one person has a duty in relation to the same matter

under the Act, each person with the duty must, so far as is reasonably practicable, consult, cooperate and coordinate activities with all other persons who have a duty in relation to the same matter.

Subject to the model Mining Regulation, the safety management system for a mine must describe the arrangements in place, between any PCBUs at the mine, for consultation, cooperation and the coordination of activities in relation to compliance with their duties under the WHS Act and this Regulation (s. 621(e)).

C: COOPERATION**Article 15**

Measures shall be taken, in accordance with national laws and regulations, to encourage cooperation between employers and workers and their representatives to promote safety and health in mines.

ACT Response

The model Mining Regulations and the WHS laws are compliant with Article 15.

Under section 152 of the WHS Act, one of the functions of the Regulator, WorkSafe ACT, is to foster a cooperative, consultative relationship between duty-holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters.

Section 675N of the model Mining Regulation provides that the mine operator of a mine must implement a safety role for the workers at the mine that enables them to contribute to:

- the identification (in accordance with section 626 of the Regulation) of principal mining hazards relevant to the work that the workers are or will be carrying out; and
- the consideration of control measures for risks associated with principal mining hazards at the mine; and
- the conduct of a review under section 628 of the Regulation.

In addition, under section 675O of the model Mining Regulation, the mine operator must consult with workers at the mine in relation to the following:

- (a) the development, implementation and review of the safety management system for the mine;
- (b) conducting risk assessments for principal mining hazard management plans;
- (c) preparing, testing and reviewing the emergency plan for the mine;
- (d) the implementation of the workers' safety role under section 675N of the Regulation; and
- (e) developing and implementing strategies to protect persons at the mine from any risk to health and safety arising from the following:
 - (i) the consumption of alcohol or use of drugs by any person; and
 - (ii) worker fatigue.

Further, division 5.2 of the WHS Act sets out requirements for consultation between employers and workers. Under section 47 of the WHS Act, a PCBU must, so far as is reasonably practicable, consult, in accordance with this division and the WHS Regulation, with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to work health and safety. Further information on provisions relating to the nature of consultation and circumstances in which consultation is required under WHS Legislation is outlined in Article 5(2)(f).

PART IV: IMPLEMENTATION**Article 16**

The Member shall:

- (a) take all necessary measures, including the provision of appropriate penalties and corrective measures, to ensure the effective enforcement of the provisions of the Convention; and
- (b) provide appropriate inspection services to supervise the application of the measures to be taken in pursuance of the Convention and provide these services with the resources necessary for the accomplishment of their tasks.

ACT Response

The model Mining Regulations and the WHS laws are compliant with Article 16.

Article 16(a)

The WHS Act sets out a comprehensive enforcement regime, including the provision of appropriate penalties and corrective measures to ensure the effective enforcement of the provision of Convention 176.

The ACT Work Health and Safety *Compliance and Enforcement Policy* provides further information about these enforcement options as well as the investigation and prosecution policies. The ACT Office of the Director of Public Prosecutions (DPP) *Prosecution Policy* identifies the processes and factors taken into account in deciding whether to prosecute an employer or worker.

Under section 230 of the WHS Act, subject to 230(5), proceedings for an offence against the WHS Act may be brought by the Regulator or an inspector with the written authorisation of the Regulator (either generally or in a particular case). If the regulator believes on reasonable grounds that a person has committed an offence against the WHS Act, the regulator may refer the matter to the ACT Office of the DPP.

To ensure compliance with WHS Legislation in the ACT, sections 31-33 of the WHS Act establishes a comprehensive regime with three levels of offences and penalties for the principal safety duties. These are:

Reckless conduct – category 1

The person with a health and safety duty is reckless as to the risk to an individual of death or serious injury.

- The maximum penalty for an individual (not a PCBU) is \$300,000 or 5 years imprisonment or both.
- The maximum penalty for an individual who is a PCBU is \$600,000 or 5 years imprisonment or both.
- The penalty for a body corporate is \$3,000,000.

Failure to comply with health and safety duty – category 2

The person has a health and safety duty and the failure exposes an individual to a risk of death or serious injury or illness.

- The maximum penalty for an individual (not a PCBU) is \$150,000.
- The maximum penalty for an individual who is a PCBU is \$300,000.
- The penalty for a body corporate is \$1,500,000.

Failure to comply with health and safety duty – category 3

The person with a health and safety duty fails to comply with that duty.

- The maximum penalty for an individual (not a PCBU) is \$50,000.
- The maximum penalty for an individual who is a PCBU is \$100,000.
- The penalty for a body corporate is \$500,000.

There are also criminal and civil penalties for breaching specific offence provisions within the WHS Act and associated Work Health and Safety Regulation 2011.

Work health and safety inspectors can also secure compliance with WHS Legislation by issuing improvement notices (s. 191) or prohibition notices (s. 195), infringement notices (Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011), orders for remedial action (s. 211, s. 212), injunctions (s. 215) and through enforcement provisions (s. 216(1)).

Article 16(b)

WorkSafe ACT is the relevant regulator responsible for compliance and enforcement of the WHS laws in the Territory, and has the function to conduct and defend proceedings under the Act before a court or tribunal (s. 152).

WorkSafe ACT inspectors are appointed under section 156 of the WHS Act and, under section 160 of the Act, have the power to:

- require compliance with the Act through the issuing of notices, for example, improvement notices (section 191), prohibition notices (section 195), and non-disturbance notices (section 198);
- investigate contraventions of the Act and assist in the prosecution of offences; and
- attend coronial inquests in relation to work-related deaths and examine witnesses.

Under section 163 of the WHS Act, WorkSafe ACT inspectors may at any time enter a place that is, or that the inspector reasonably suspects is, a workplace. Pursuant to section 165 of the WHS Act, an inspector who enters a workplace under section 163 may do one or more of the following:

- inspect, examine and make enquiries at the workplace;
- inspect and examine anything (including a document) at the workplace;
- bring to the workplace and use any equipment or materials that may be required;
- take measures, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);
- take and remove for analysis a sample of any substance or thing without paying for it;
- require a person at the workplace to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e);
- exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of this Act.

Also under section 165 of the WHS Act, a person required to give reasonable help under subsection (1)(f) must not, without reasonable excuse, refuse or fail to comply with the requirement and, under section 188, a person must not intentionally hinder or obstruct an inspector in exercising his or her compliance powers, or induce or attempt to induce any other person to do so.

In addition, a WorkSafe ACT inspector who enters a workplace under section 163 may seize the workplace or part, the plant, the substance or the structure if the inspector reasonable believes that the workplace or part of the workplace, or the plant at the workplace, or a substance at the workplace or part of the workplace, or a structure at a workplace is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur (s. 176). A WorkSafe ACT inspector may also seize anything (including a document) at a workplace if they reasonably believes the thing is evidence of an offence against this Act (s. 175)

Further, section 155 of the WHS Act provides regulators with powers to obtain information, documents or evidence if it reasonably believes that a person is capable of doing so or if it will assist the regulator to monitor or enforce compliance with the Act.

In addition, section 39 of the WHS Act requires the person with management or control of a workplace at which a notifiable incident has occurred must ensure so far as reasonably practicable, the site where the incident occurred is not disturbed until a WorkSafe ACT inspector arrives at the site or any earlier time that an inspector directs. This does not prevent any action that is essential to make the site safe, is associated with a police investigation, or action to assist an injured or remove a deceased person.

An inspector may issue a non-disturbance notice to the person with management or control of a workplace if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of his or her compliance powers (s. 198).

Given the limited geographical footprint of the ACT, all inspectors work from a central location in Canberra. This Office is equipped with sufficient resources and facilities to allow inspectors to perform their role and these are accessible to all persons. Inspectors have access to pool cars, are provided with mobile phones and a range of personal protective equipment. They are reimbursed for any work related travel costs incurred in undertaking their duties, including duties out of normal business hours.

PART V: FINAL PROVISIONS**Article 17**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English and French versions of the text of this Convention are equally authoritative.

No response required in relation to the Final Provisions.