

Discussion Paper

The System of Training and Continuing Professional Development for Certificate of Competence Holders in the NSW Coal Industry

Invitation for Public Comment

Closing date for public comment: 6 November 2009

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1. INTRODUCTION TO THE DISCUSSION PAPER

1(a) Overview

The NSW Coal Competence Board has been investigating a system that supports Certificate of Competence holders to maintain and develop their competencies for the legislated specified function they perform. As a result, this discussion paper has been released to consult with stakeholders in the NSW mining industry to obtain their feedback on the suitability of the proposed system, as a condition to be imposed on all Certificates of Competence issued.

The need for ongoing training and continuing professional development is found in the history of Australian coal mining safety, with significant events such as the Queensland Moura No. 2 Mine Disaster. Certificate holders may not be competent, unless they refresh and update their skills, knowledge and experience. The risk of losing competency has been responded to in the current NSW *Coal Mine Health and Safety Act 2002* and Regulation. The legislation enables the Coal Competence Board to establish requirements for the maintenance of competence for Certificate of Competence holders, subject to the approval of the Minister for Mineral Resources.

The Coal Competence Board is proposing a system, which will provide a suitable mix of training and/or continuing professional development (CPD) programmes, according to the type of Certificate of Competence. The mix will be determined by the general ongoing training and development needs of the specified function, for which the Certificate is required. The system will support employers to ensure their certificate holders, performing specified functions, receive the necessary training and development to remain competent.

Suitable Registered Training Organisations (RTO's) and occupational associations will be endorsed by the Coal Competence Board to be involved in the proposed system. The Board will assess organisations for their ability to provide refresher training or CPD that is suitable for individuals and the coal mining industry.

The proposed system will utilise current compliance processes and resources within the mining industry to ensure people meet the conditions to be imposed on their Certificate of Competence. The employer's role, to have their employees receive training and CPD to be competent, will be a major part of ensuring compliance.

At the same time, certificate holders will need to ensure they are satisfying their refresher training and CPD requirements, if they are to perform a specified function. The Board's role will be to ensure the RTO's and occupational associations they endorse are meeting the standards set. The Board is not considering that certificate holders be reassessed for their certificates, have to renew them, or be threatened with the loss of their certificates.

Public comment received by the Coal Competence Board will be considered in finalising the design and content of the proposed system. A template appears towards the end of the discussion paper as an aid to seek specific feedback on key issues for the success of the proposed system. It is then planned for the Board to advise the Minister for Mineral Resources of the finalised proposal to request his approval, before the end of 2009. The implementation of the system is planned for first half of 2010. It will commence in a structured approach to aid industry and be supported by a comprehensive communication and education strategy.

1(b) The Coal Competence Board

The Coal Competence Board has been established to improve mine safety performance by ensuring the competence of people to work safely in the New South Wales coal mining industry. It advises the Minister for Mineral Resources and oversees the development of competence standards and the assessment of competencies, and is now developing this system for ongoing competence training and development.

The Board was established in 2006 following the introduction of the *Coal Mine Health and Safety Act 2002* and *Coal Mine Health and Safety Regulation 2006*. It took over the work previously done by the Coal Mining Qualifications Board.

Mr John Maitland was appointed as the inaugural Chairman of the Board. The Board has representation from the NSW Minerals Council, the Construction Forestry Mining Employees Union (CFMEU), people with expertise in the development and assessment of competence in the coal industry and senior officers from Mine Safety, within Industry and Investment NSW (I&I NSW).

1(c) Key Terms and Definitions

Training	activities designed to facilitate the learning and development of new and existing skills, and to improve the performance of specific tasks or roles
Continuing Professional Development (CPD)	ongoing training and education throughout a career to develop and update the knowledge used
Competent person	for any task means a person who has acquired through training, qualification or experience, or a combination of them, the knowledge and skills to carry out that task.
Occupational Association	means a body corporate: (a) which represents the interests of persons who are members of the same occupational group or related occupational groups, and (b) the membership of which is limited principally to members of that occupational group or those occupational groups.
Registered Training Organisation (RTO)	an organisation registered by a State or Territory recognition authority, to deliver training and/or conduct assessments and issue nationally recognised qualifications, in accordance with the Australian Quality Training Framework.
Specified function	An official or professional position of the type set out in clause 162 of the <i>Coal Mine Health and Safety Regulation 2006</i> , requiring prescribed evidence of competence for a person to perform in that position,

1(d) Purpose of this discussion paper

To seek views from industry, unions, individuals, Registered Training Organisations (RTO's) and interested parties on the design and content of a system for the ongoing training and Continuing Professional Development (CPD) of Certificate of Competence holders performing specified functions.

1(e) Objectives of the discussion paper

1. To inform of the need for a system for the ongoing training and CPD of certificate holders performing specified functions in the NSW coal mining industry.
2. Seek the views of industry, unions and interested parties on the possible system proposed by the Coal Competence Board.
3. Obtain feedback from persons who have experience in developing and operating competence systems.

1(f) How to provide feedback

Consultation on occupational health and safety public policy is important so that the Coal Competence Board is effective and responsive to the needs of the current and future working arrangements of the NSW coal mining industry. The Board wants to ensure that persons, issued with Certificates of Competence, continue to perform safely in specified functions and support OHS in the mining industry

You can provide your submission or comment as an individual or you may wish to contribute to a joint submission through your employer or union organisation, occupational association, safety group, community forum or OHS Committee. The closing date for submissions is **Friday, 6 November 2009**.

Submissions should be prepared using the format provided at Appendix B and sent by email, fax or mail to:

Email: coalcompetence.board@industry.nsw.gov.au

Fax: (02) 4931 6706

Mail: PO Box 344, Hunter Region Mail Centre 2310

I&I NSW will issue a written acknowledgement, to confirm the receipt of your submission.

Submissions do not remain confidential and may be viewed by persons under Freedom of Information legislation and will form part of the submission to the Board. A specific response will not be provided as the matters raised will be addressed in the submission to the Board.

2. COAL COMPETENCE BOARD DEVELOPMENT WORK

2(a) Working group and research undertaken

From its inception, the Coal Competence Board has determined that one of its priorities was to establish a system for the training and development of certificate holders to meet present and future industry OHS requirements, when performing the legislated specified functions. To this end, a working group made up of Board members was set up to investigate and develop a system.

One of the first steps taken by the working group was to research the options for such a system and the current practices in NSW, and other states, for continuing professional development. The research was carried out for the working group by the NSW Mining Industry Skills Association (MISA). A report on the research findings was provided in August 2008 by Mr Graham Terrey, Director of Mine Resilience (Australia) Pty Ltd.

The report is attached to this discussion paper. The major relevant findings from the report can be summarised as follows:

- no other Australian state has a system for ongoing training and development of certificate holders in place, nor does NSW WorkCover have such a system
- the importance of maintaining competence as “a vital part of being systematic about safety and health.... At a basic systematic level there must be:
 1. a clear intent to have competent people
 2. a logical and communicated approach regarding competency
 3. deploying competency system elements
 4. monitoring the effectiveness of that deployment
 5. reviewing and upgrading competency on a regular basis.”
- there are a range of continuing professional development (CPD) systems that are provided by occupational associations. The CPD programmes can be voluntary or required as part of the membership of the association.
- a number of options for a system were canvassed in the report, which ranged from re-certification through to making CPD programmes and refresher training compulsory

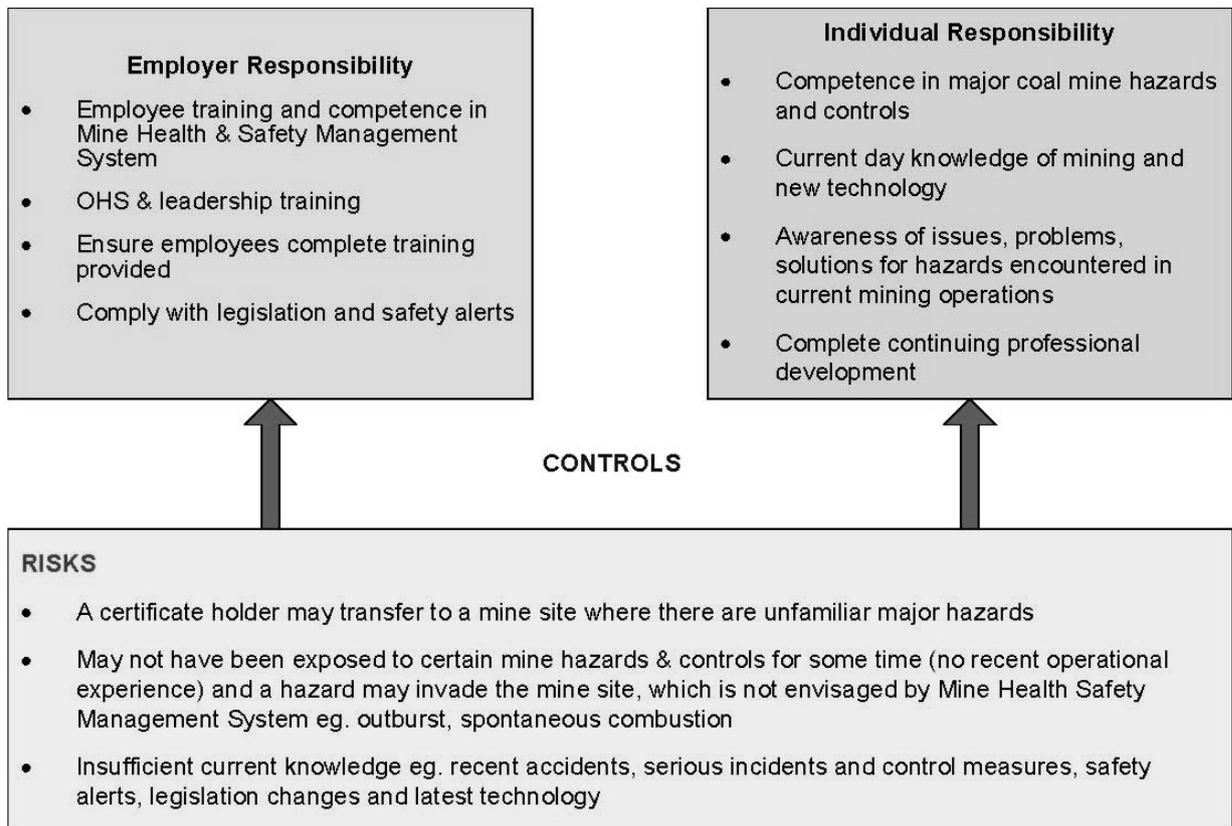
The working group has considered the report and developed a proposed system for industry discussion, which assists in risk managing the ongoing training and competence of certificate holders performing specified functions.

2(b) Risk management of certificate holder competence

The risks from loss of competence by certificate holders are dependent upon the position the person holds in the management structure, because of the potential impact on operations. For example, the competence of a Manager of Mining Engineering at an underground mine poses a potentially different risk to operations, than that of a Deputy. Therefore the training and development needs to maintain competence for each type of Certificate of Competence will vary.

The risk of certificate holders not staying competent comes about through a range of circumstances, such as that a person has not worked in the specified function for some time and kept their competencies up to date. It may also be due to the employee not undertaking sufficient ongoing training and CPD to retain competence.

The system proposed for the ongoing training and CPD of certificate holders recognises the role of the employer and the individual. The suggested responsibilities for the employer and individual are shown in the following diagram.



The system proposed by the Coal Competence Board takes into account the role and responsibilities of an employer and individual certificate holders to enter into arrangements to update knowledge of current day mining techniques, hazards and controls, new technology and OHS incidents, applicable across the coal industry.

2(c) Overview of continuing professional development schemes

Qualified people employed in many professions in Australia and overseas subscribe to continuing professional development (CPD) schemes relevant to their particular professions, as a means of updating their skills and knowledge, and keeping abreast of the latest developments in technology and legislation.

The continuing professional development schemes have two main components;

1. scheme structure: organisations operate a programme, which requires the individual to complete a certain number of hours and/or types of learning opportunities within a defined period, so their competencies for their field of work are retained and developed.
2. access to learning opportunities: these opportunities may be facilitated by the organisation or the individual undertakes activities, which they submit to the organisation to be recognised under a specified criteria. Individual activities may include training undertaken with their employer, provided it is of a quality and type which meets the schemes requirements.

It is important that the CPD schemes provide learning opportunities that are relevant to the occupation in various industries. In the case of coal mining, there are areas of specialised knowledge and skills that are unique to the industry and mining staff should be updated and developed for them.

There are already a number of CPD schemes successfully operating that are accessed by coal mining staff, such as those provided by the Mine Managers Association of Australia and Engineers Australia. The requirements of each scheme for persons vary, but they all contain the main components outlined above, as illustrated over page in a table for the two organisations mentioned above:

2(c) Overview of continuing professional development schemes

Name and specified functions covered	Eligibility Criteria for CPD	Cost	CPD scheme hours	Records / audits
Mine Managers Association of Australia for Mining Supervisors and Managers of Mining	Nil	\$50 to register for the CPD scheme Cost of attending scheme activities may be from \$380 or more per annum	Complete 45 hours over three years, in categories specified	Online database through website, currency printouts available; ongoing monitoring of individuals with annual audits
Engineers Australia for Electrical and Mechanical Engineers, and the Under Ground Managers of Engineering	Registered on the National Professional Engineers Register (NPER)	\$ 195.80 per annum for full registration on NPER, cost of CPD is determined by mix of activities undertaken, but could be from \$283 or more per annum	150 hours over 3 years, with 50 hours to be in the area of practice ie. Mine electrical or mechanical which could be obtained through attending the Mining Electrical and Mining Mechanical Engineers Society activities	Written or online logbook maintained by individual and audited every five years by Engineers Australia, which must be accompanied by a Statement of Experience detailing relevant experience gained and activities undertaken.

Typically, the CPD schemes contain activities ranging from attending technical presentations or training courses, to a person undertaking self directed study.

The Coal Competence Board will consider endorsing any CPD scheme, which sufficiently focuses on retaining and developing the competence of certificate holders specifically for the coal mining industry. This should enable persons to remain competent when they are not currently performing a specified function, such as when they move into related roles or provide consultancy services, and later on, want to return to being employed in a specified function.

3. PROPOSED SYSTEM FOR TRAINING AND CPD OF CERTIFICATE HOLDERS

3(a) System parameters

Aim: Implement a system which requires persons with Certificates of Competence to undertake training and CPD activities to retain and improve their competencies to perform safely in a specified function

Scope: Persons issued with a Certificate of Competence by the Minister for Mineral Resources, employers and training or CPD providers.

Objectives:

1. To provide training and CPD schemes specific to each Certificate of Competence, in line with the specified function performed
2. To refresh basic knowledge and up date on the latest technology in relation to the control of major hazards in mining operations
3. To promote awareness of safety issues, problems and solutions experienced in mining operations
4. To inform of the casual factors and controls in regard to accidents and incidents that occur in mining and associated industries

3(b) Certificate conditions for maintenance of competence

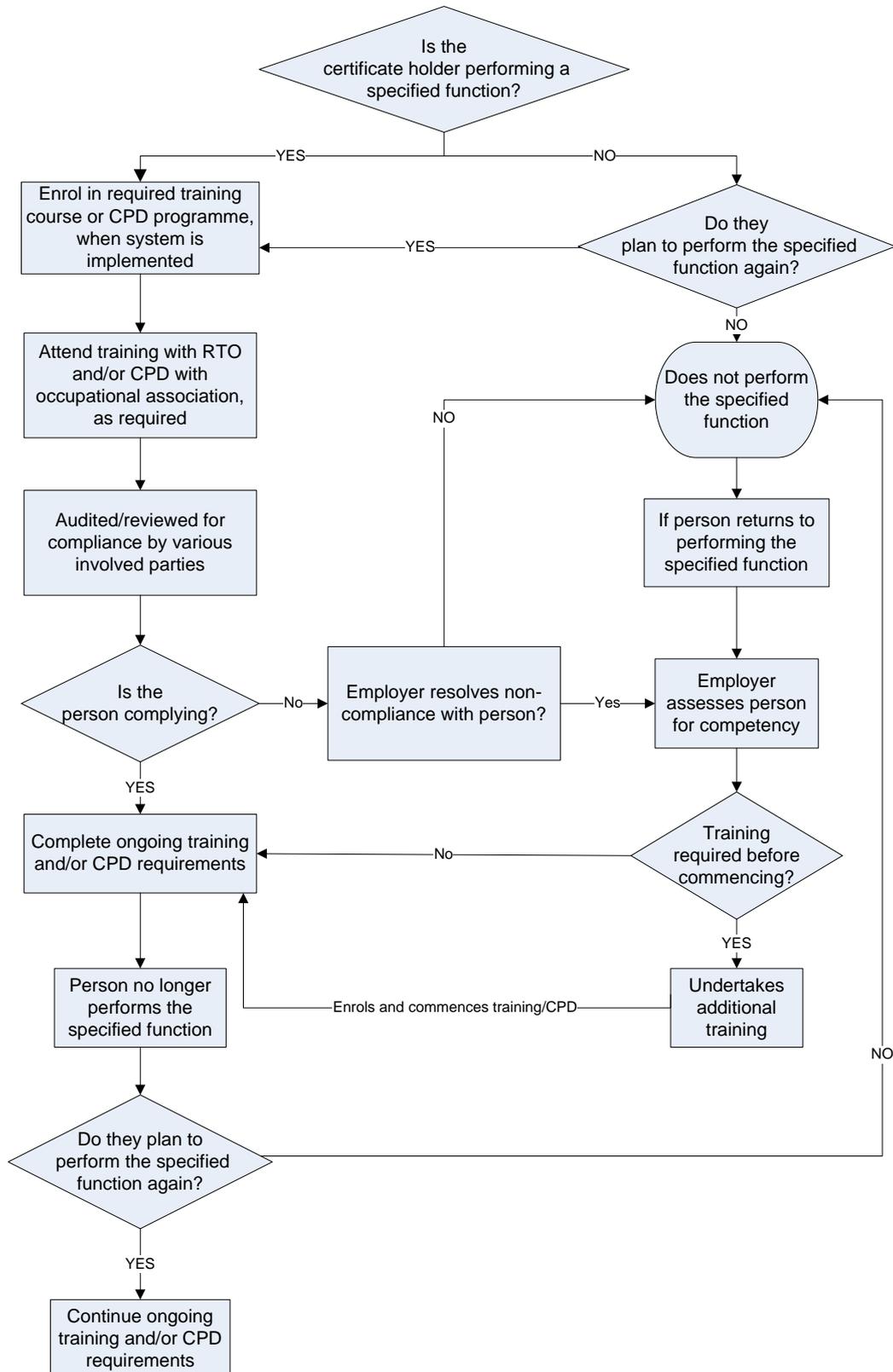
The general nature of the conditions for a certificate holder to satisfy under the proposed system, if they are performing the specified function, will be to:

1. meet the requirements for refresher training and continuing professional development, as determined by the Coal Competence Board for the type of Certificate of Competence held.
2. A holder, who is not meeting the conditions must:
 - a) notify their employer or clients (if applicable) and;
 - b) resolve the deficiency within a reasonable timeframe determined, but no longer than twelve months.

New certificates to be issued will contain details of conditions. Persons, who already hold a certificate and performing a specified function could be directly notified by letter, care of their employer's address. These details could be obtained by I&I NSW from mine site operators, who currently provide details of their management structure. This may require amendments to legislation to require notification of all people who are performing the specified functions. I&I NSW would also communicate the new conditions through notices, seminars and websites.

3(c) Operation of proposed system

The flowchart below explains what a certificate holder needs to do in order to fulfil the requirements of the proposed system for training and CPD. It also covers a certificate holder, who may move into and out of performing a specified function, under Clause 162 of the *Coal Mine Health and Safety Regulation 2006*.



3(d) Training and continuing professional development (CPD) requirements

The mix of training and development activities to be provided by Registered Training Organisations (RTO's) and occupational associations in their CPD programmes would vary according to general ongoing training and development needs of the specified functions, for which the Certificate of Competence is required, as set out in the table below:

Group	Certificate of Competence	Specified Function	Requirement	System Delivery	Possible Provider
1	Manager Open Cut Manager Undermanager	Manager of Mining Engineering (U/G or O/C), Mining Supervisor	Continuing Professional Development scheme	Occupational Association	Mine Managers Association of Australia
2	Deputy	Mining Supervisor (Deputy)	Refresher course (1day every 2 years) or Continuing Professional Development Scheme	Approved RTO or Occupational Association	Coal Services (Mines Rescue) Mine Managers Association of Australia
3	Open Cut Examiner	Mining Supervisor (Open Cut Examiner)	Refresher course (1 day every 2 years) or Continuing Professional Development Scheme	Approved RTO or Occupational Association	Coal Services (Mines Rescue) or Mine Managers Association of Australia
4	Mine Electrical Engineer (Open Cut & Underground) Mine Mechanical Engineer (Open Cut & Underground)	Qualified Electrical Engineer Qualified Mechanical Engineer	Continuing Professional development scheme, as part of the National Registers of Engineers Australia	Occupational Association	Engineers Australia, with the involvement of the Mining Electrical & Mining Mechanical Engineering Society

3(e) Board standards for continuing professional development schemes

The standards required by the Coal Competence Board for occupational associations to meet in full, or substantially in principle, for endorsement of their involvement are:

- A certificate holder may enrol in the CPD programme, but is not required to join the occupational association.
- An individual is required to submit details of CPD activities undertaken externally to the association's programme, so as to determine whether they can be included and credited towards their CPD requirements
- A code of conduct that requires members to declare to the association when they are not competent to perform the specified function and seek advice to regain their competencies
- Learning opportunities that are related to the Certificate of Competence and spread across the range of competencies required
- An appeals process for persons who disagree with the association over the administration of their CPD
- A process of independent third party auditing to ensure certificate holders and the organisation are satisfying the requirements of the scheme

Depending on the industry response to the discussion paper, the Coal Competence Board plans to advise the Minister on amendments to the *Coal Mine Health and Safety Regulation 2006* to facilitate its role in endorsing associations to be involved in the proposed system.

3(f) Board standards for training by RTO'S

The Board is working on developing these standards, which will be made available separately for comment as soon as they are finalised. The standards will focus on the RTO training delivery capability and content development to refresh and improve competencies of certificate holders working in specified functions. Again, the Board would be advising the Minister on any legislative amendments to support its role in setting these standards and administering them with the RTO's.

3(g) Requirements for certificate holders to continue training / CPD

If a person changes roles with their employer and carries out work not requiring their certificate, then that is a matter for the employer to consider. The employer could require the person to continue with the training and/or CPD programme, or to recommence it upon returning to perform a specified function. At the individual level, if that person has the intention of moving back into performing a specified function at some time in the future, then he/ she should elect to continue being involved in the training and/or CPD scheme to meet their certificate conditions.

If a certificate holder does not work in a specified function and undertake the required training/CPD requirements for a significant period of time, then their employer should reassess their competencies and undertake training to ensure they are competent, before they recommence working in the specified function.

3(h) Role of the mining operator and contractor

The Coal Mine Health and Safety Act 2002, section 20, requires the operator of a coal operation to prepare a Health and Safety Management System. In particular, section 23 requires the system to include training and competence. Therefore, the training and competence of certificate holders performing specified functions needs to be addressed, as a key group in the workforce.

Operators and contractors can address certificate holder training needs, partly through supporting their attendance at the specified training and/or CPD system activities. However, the operator and contractor must still assess the competence of the certificate holder for their operations, and provide any additional training and development required to perform the specified function.

Persons, other than certificate holders, may also benefit from being supported by their employer to attend CPD and refresher training. For example, persons who act as Step Up Supervisors to assist mining supervisors, should be assessed by the operator or contractor for the part of the specified function they will be supporting. This assessment may reveal that the Step Up Supervisors should attend some of the training and CPD activities prescribed by the proposed system. In particular Step Up Supervisors, who plan to undertake the examinations to obtain a Certificate of Competence, may benefit from attending.

3.(i) System compliance by certificate holders and employers

The system could be audited and monitored for certificate holders through present arrangements in place, and proposed initiatives, as follows:

Employers, Operators and Contractors checking Employees

All parties employing or contracting a person to perform a specified function should ensure that they hold a current Certificate of Competence and when the system is introduced, ensure the holder is up to date with their prescribed CPD and/or training requirements, within 12 months. The certificate holder could be asked to provide proof of their compliance, such as a logbook or documentation from the RTO or occupational association. Legislative amendments will be proposed to clearly set out these requirements, depending on the final system adopted.

Coal Services audits of Coal Mine Training Plans under Order 34

As part of their audit, the auditors could take a representative sample of employees performing specified functions at each coal mine site and check that they have undertaken the required training and/or commenced CPD within 12 months of commencing in the function. If certificate holders were found not to be complying, then this would be raised, as part of the audit, with their employer for resolution.

RTO and Occupational Associations reporting to the Board on Compliance

The Coal Competence Board will make arrangements with involved RTO's and occupational associations for them to provide general statistics on the number of persons, who have undertaken the prescribed training and/or CPD. The statistics would be analysed by the Board to monitor the overall success and compliance of the system to make adjustments, if necessary.

Coal Competence Board Auditing of Providers and Regulation

On a periodic basis, the Board would organise for a third party to audit the operation of providers involved in the system. Alternatively, the provider could furnish a report to the Board from its own third party audit. The purpose of the audit would be to identify if the training and CPD being delivered maintains and develops the competencies of certificate holders in an effective and efficient manner. Where deficiencies are identified, then these would be resolved through negotiation between the Board and the provider. A procedure would be developed to clearly set out this process, so that a co-operative and cohesive relationship is maintained between the Board and providers. If necessary, amendments to legislation could be made to further support these arrangements or contracts entered into with each provider.

3(j) Non compliance with system requirements

Certificate holders working in specified functions must ensure they comply with their certificate conditions. If they do not, then they must notify their employer and resolve the deficiency within 12 months of failing to comply.

If an employer finds a certificate holder as not satisfying their certificate conditions, then the employer and employee should take action to resolve the deficiency, within a reasonable timeframe, or no longer than 12 months. (refer back to the flowchart on page 11 for the operation of the proposed system in this regard)

If the Board is made aware of individuals working in specified functions, who are not complying with their certificate conditions, then it would bring the issue to the attention of their employer to resolve in the first instance.

If non compliance could not be resolved and the risk is ongoing, then the Board would discharge its legislative functions and recommend that the Minister for Mineral Resources suspend or cancel the Certificate of Competence. Under the *Coal Mine Health and Safety Regulation 2006*, there are already provisions for a Certificate of Competence to be suspended or cancelled by the Minister. However, the Board is not focussed on taking this sort of action, as it believes certificate holders and employers will be motivated to comply, because of the need and benefit to their work from ongoing refresher training or CPD.

The Board will monitor the overall success of the system in meeting its objectives. If the Board identifies that an ongoing significant proportion of certificate holders performing specified functions are not meeting the conditions for maintenance of competence, then further stronger measures, including legislative amendments to promote greater compliance may be considered.

3(k) Holders of certificates issued prior to 1984 and mutual recognition registrations

Persons issued with Certificates of Competence under the *Coal Mines Regulation Act 1912* until 26 March 1984 are not subject to the present maintenance of competence regulation requirements. However, legislative amendments are proposed to the *Coal Mine Health and Safety Act 2002* and *Coal Mine Health and Safety Regulation 2006* so these certificate holders are subject to the same conditions imposed on other certificate holders

People who have Certificates of Competence from other Australian states or New Zealand, and are recognised for use in NSW, are not bound to undertake the proposed training and CPD. However, the Coal Competence Board takes the view that under legislation, employers would still need to ensure that sufficient training and CPD are being undertaken by these people to remain competent in the specified function carried out. In light of this and employers having to contend with managing mutual recognition registrants in their workforce differently, it is thought that the individuals, with their employers support, will choose to participate in the proposed system.

3(l) Implementation of proposed system

After the public comment received has been considered and responded to, the Board will refer the finalised system proposal to the Minister of Mineral Resources for approval. Once approved, the system would be announced in the NSW Government Gazette. At the same time, the Board and I&I NSW would carry out an extensive communication process with the NSW coal mining industry on the operation and requirements of the system and provide appropriate documentation to assist individuals and involved employers to comply, within 12 months of commencement.

A conservative estimate of the number of people, performing each of the specified functions in the NSW coal mining industry, is listed below (based on I&I NSW and external data):

Open Cut Examiner - 150

Deputy - 580

Undermanager - 165

Manager of Mining, Electrical or Mechanical Engineering - 225

Mine Electrical Engineers - 36

Mine Mechanical Engineers - 36

It is proposed that a sufficient number of RTO's and occupational associations will be involved in the system to service this number of people and others interested.

4. THE NEED FOR ONGOING TRAINING AND CPD

4(a) Warden's Court Inquiry Report into the Moura No.2 Mine Disaster

Certificate of Competence holders remaining competent is an issue for the mining industry in Australia. This was highlighted in a recommendation from the Warden's Court inquiry into the Moura No. 2 Mine explosion of 7th August 1994, where 11 men were killed. The recommendation was for persons to demonstrate their fitness to retain their certificate of competence and was framed in the following terms:

"The recommendation relating to statutory qualifications is intended to ensure that those holding such qualifications revisit the lessons and update their knowledge..... It should not be taken that a statutory certificate of competency to practise as a mine manager, undermanager or deputy carries an assurance that the person possessing the qualification is maintaining, and where necessary, developing the knowledge base required for the appointment. It is recommended that the procedures for granting statutory certificates for underground coal mining and the conditions under which they are awarded, be reviewed..... The process should aim to ensure that certificate holders maintain a sound knowledge of technical developments in coal mining and most particularly those relevant to coal mine safety."

4(b) Implementation of Inquiry Report Recommendations

The Queensland Government undertook to implement all of the Inquiry recommendations and set up five Task Groups to progress particular items. New South Wales coal industry stakeholders were represented as observers on four of the Task Groups, and as a full member on one.

In November 1996, the NSW Government commissioned a broad ranging Review of Mine Safety in New South Wales. One of the terms of reference for the Review was to consider how the recommendations of the Warden's Court Inquiry into the Moura Mine disaster should be applied in New South Wales. The Review Group reported its findings in March 1997. One of its recommendations was for the Department of Mineral Resources "to chair a NSW Stakeholders Group charged with determining the applicability of the Moura Task Group recommendations in NSW".

The NSW Government, in response, set up a Steering Group and Implementation Group to action all the Review Report's recommendations. This was achieved by setting up Task Groups made up of NSW mining industry stakeholders to assess and ensure the recommendations of the Review Report were implemented, and as part of this process, those of the Moura Task Groups. In the *Steering Group Report of Mine Safety Review Implementation*, Volume 1, April 1998, page 104, it reported that "All applicable recommendations made by the Moura Task Groups are implemented in NSW" but added "that many of the Moura Task Group recommendations will be picked up in the draft regulations for the CMRA". (Coal Mine Regulation Act).

In July 2000, a discussion paper titled *Transforming Health and Safety Regulation in NSW Coal Mines* was put out for public comment by the Department of Mineral Resources. On page 65 of the paper, the issue of maintaining competence is raised and the question posed for comment "What are the most appropriate means through which persons can initially demonstrate and then maintain technical competence?". There was extensive comment from the coal mining industry on the discussion paper, which was reviewed by the stakeholder based Coal Safety Advisory Committee that advised the NSW Government. The *SAFETY WORKS: Proposal for a Coal Mine Health and Safety Act Position Paper* was then issued in November 2001, which set out the Government's preferred position for new legislation. In section 10.2.2 Competence Standards, on page 49, it states "...the Board (the proposed Coal Competence Board) will be able to deal with the issue of the ongoing maintenance and assessment of competence so that people will no longer be given 'tickets for life'".

Subsequently, the *Coal Mine Regulation Act 1982* was repealed and replaced on the 23 December 2006 by the *Coal Mine Health and Safety Act 2002* and *Coal Mine Health and Safety Regulation 2006*. This new legislation enables a system to be established to maintain the competence of Certificate of Competence holders.

5. LEGISLATION AND ENVIRONMENT FOR PROPOSED SYSTEM

5(a) Coal Competence Board functions

The *Coal Mine Regulation Act 1982* was replaced by the *Coal Mine Health and Safety Act 2002* and *Coal Mine Health and Safety Regulation 2006*. Under the new legislation, the Coal Mines Qualification Board was replaced by the Coal Competence Board in 2006.

The Board's functions are specified in section 134 of the Act:

- (1) "The Board has the functions conferred or imposed on it by or under this Act.
- (2) Without limiting subsection (1), the functions of the Board include the following:
 - (a) to oversee the development of competence standards for people performing functions at coal operations that may impact on health and safety,
 - (b) to undertake initial and ongoing assessments of the competence of people performing functions at coal operations,
 - (c) to advise the Minister on matters related to the competence required of people to perform functions at coal operations,
 - (d) any other functions that the Minister may confer on the Board from time to time.
- (3) Without limiting subsection (2), the Board may do any or all of the following for the purpose of carrying out its functions:
 - (a) engage consultants,
 - (b) develop competence standards or cause competence standards to be developed,
 - (c) assess a person's competence, cause a person's competence to be assessed or accept an assessment of a person's competence".

The *Coal Mine Health and Safety Regulation 2006* specifies requirements for assessment of competence by the Board, as follows:

Clause 164 – “The Board may develop guidelines for the assessment of competence standards of people performing functions at coal operations”

Clause 165 – “In assessing the competence of a person to perform a function, the Board may accept:

- (a) Any relevant qualifications that are for the time being accepted by the Board as being equivalent to a certificate of competence, or
- (b) The applicant’s learning and experience, or
- (c) A demonstration of competence in examinations conducted by or on behalf of the Board, or
- (d) The results of any previous assessments”

5(b) Maintenance of competence regulations

The *Coal Mine Health and Safety Regulation 2006*, clause 173, states:

- (1) Subject to the Minister’s approval, the Board may establish requirements for the maintenance of competence for holders of a certificate of competence.
- (2) Compliance with any such requirement is a condition of the relevant certificate of competence.

Note. Requirements for the maintenance of competence for holders of certificates of competence apply to certificates granted under the *Coal Mines Regulation Act 1982* and taken to have been granted under the *Coal Mine Health and Safety Act 2002* in the same way as they apply to certificates granted under the latter Act.

To date, the Coal Competence Board has not established any requirements for certificate holders to undergo further training and development, to retain and improve their competencies. However, the Board has been updating the competency material and assessments for new applicants, so that it is now in a position to address the maintenance of competence after the certificate is issued. The Board is using the successful piloting of training for Site Check Inspectors and the annual Check Inspectors conference to design the proposed system and advise the Minister on legislative amendments required to support its introduction.

5(c) Development of training for Check Inspectors

The role of Check Inspectors was established in the previous *Coal Mine Regulation Act 1982* and widened in the *Coal Mine Health and Safety Act 2002*. The current Act requires the Site Check Inspectors to undergo accredited training for their role, which then also enables them to be a member of an OHS Committee under the *Occupational Health and Safety Act 2000*.

As part of the material developed by the Mine Safety Advisory Council from 2000-2006, the issue of Check Inspectors undergoing training for their role was first identified. With the inception of the current Act in 2006, requiring accredited training to be delivered, the process of developing a suitable training package has been overseen by the Board. The pilot course was developed by Learning and Assessment Strategies Pty Ltd and delivered by Coal Services (Mines Rescue) in 2008 and 2009, with very positive feedback from participants and mining industry stakeholders. The package will be delivered on an ongoing basis to newly appointed Check Inspectors. Coal Services, through the Mines Rescue, is also now delivering parts of the Site Check Inspector Training Package to Deputies of mining companies, to refresh them in topics, such as risk management.

The training package is supported by the annual Check Inspectors Conference, held since 2000. The conference is organised by Industry and Investment NSW and supported by the Board. The conference has presentations on various OHS topics to refresh and enhance the knowledge and skills of Check Inspectors. The conferences are well attended and supported by industry as being an essential to improve and develop the knowledge and skills of Check Inspectors, in an ever changing work environment.

5(d) National Mine Safety Framework and co-ordination with Queensland Board of Examiners

The National Mine Safety Framework (NMSF), an initiative of the Ministerial Council on Mineral and Petroleum Resources (MCMR), aims for a nationally consistent OHS regime in the mining industry. The Framework consists of seven strategies, focused on areas where consistency across jurisdictions would be most beneficial. The goal of the NMSF is to achieve both consistency and improved safety outcomes through appropriate regulatory frameworks.

In November 2005, MCMR established a tripartite Steering Group (comprising State/Northern Territory and Australian Government officials, five industry associations, and two trade unions and the Australian Council of Trade Unions) to guide the development of the framework. The Steering Group met for the first time in July 2006.

The MCMR endorsed the seven strategies on 28 October 2008, including Strategy Two - Competency Support, which involves the following:

- a) development of a standard set of competencies for 18 mining specific roles identified in various jurisdictions' legislation,
- b) reaching agreement on how those competencies are demonstrated,
- c) and identifying a process that allows jurisdictions to implement the agreed national standards in a manner consistent with their respective legislation.

The implementation of one of the other endorsed strategies, Regulatory Competency, will involve the refinement of a list of 'competencies within the ideal inspectorate'; undertaking an independent capability analysis of the inspectorate based on this competency list; and the development and/or delivery of training to improve or broaden capabilities, as identified during the independent capability analysis. This will involve the delivery of training packages at a national level, such as through a national regulators forum.

In the current context of national consistency, the NSW Coal Competence Board met with their Queensland counterparts in October 2008 to exchange information and discuss issues of mutual interest. The Queensland Board of Examiners is also considering introducing a system for the ongoing training and development of certificate holders. The Boards have agreed to collaboratively develop systems that are similar to make it easier for employers and certificate holders to understand and meet the requirements, if they work between the two states. It is also thought that in developing similar systems, this may influence developments at the national level.

6. POSSIBLE QUESTIONS AND ANSWERS ABOUT THE PROPOSED SYSTEM

The following questions and answers have been compiled to cover those that may arise for the various stakeholders and interested parties. The questions have been set out in categories of who, what, where, when, how and why types.

WHO?

If I am not in a job that requires my Certificate of Competence , will I have to do the training and CPD?

It depends on whether you are intending to return to a role in the near future that requires the Certificate of Competence. If you are, then it is important that you keep up to date with changes that affect the role through training and CPD. If you do not keep up to date with your knowledge and skills, then your employer should assess you and possibly require you to undertake more extensive training before you return to the role. If you do not intend to return to a job that requires the certificate, then you do not have to do meet the requirements. You will not have your certificate revoked as a consequence, but will not be able to use it for work requiring it.

I have several Certificates of Competence. Do I have to do training and CPD for each one so as to retain them?

If the certificates relate to the same area (eg. mining supervisor) then meeting the requirements for the highest level would be sufficient. For example, if a person possesses an Undermanager's and Deputy's Certificates, then meeting the training and CPD requirements for an Undermanager would satisfy both.

If the certificates relate to different areas (eg. Mining Manager and Manager of Electrical Engineering) and the person still utilises both in their work, then they would need to satisfy the training and CPD requirements for both certificates. However, there may be some in common activities, which mean that their completion would be credited to the requirements for both certificates.

If I move interstate or overseas will I be required to continue training and CPD?

Yes, if you are planning to return to work in NSW in the near future to perform a specified function. If not, then you will have to decide whether you want to continue to meet the requirements to maintain your certificate competencies, as they may have relevance, if you continue to work in the mining industry. Your certificate will not be taken away from you, but if you were to ever require it again for work in NSW, then your employer would need to assess your competency before commencing.

If I have not worked in the specified function requiring my certificate for some time, what do I do to allow me to return and work in the role?

Initially your employer is responsible for ensuring that an assessment of your competencies is undertaken to identify any deficiencies. These deficiencies may need to be resolved with refresher training before you commence. You would then need to complete the required refresher training or enrol in the CPD scheme within 12 months of commencing work in the specified function, or sooner if your employer requires it.

Am I required to do the training or CPD if I work part time or on contract to perform the specified function?

Certificate holders, regardless of their working hours or employment type, are required to satisfy the conditions of the certificate for refreshing and developing their competencies, through training or CPD.

WHAT?

What is the cost and who is going to pay for it?

Responsibility for undertaking the training and CPD rests with the certificate holder and therefore paying the costs. However, the Board recognises the important role employers will play in supporting employees to meet their training and CPD requirements. Contractors to mine operators will need to consider the costs in their business operations and charges.

What sort of training or CPD will I be required to attend?

This will depend on the type of Certificate of Competence you hold, which have different needs. Approved training can involve being refreshed on identified key competencies, as well as introducing new knowledge and skills. CPD can range from seminars, where technical papers are presented on new developments in areas of interest, self directed study, or attending meetings where new safety practices or incidents are reviewed. Overall the activities are designed to ensure you are up to date with the latest information and skills to best perform your specified function. Training undertaken with your employer could be credited towards CPD scheme requirements, if it is of a suitable type and quality.

How do I prove to my employer or contractor that I am meeting my Certificate conditions?

It will depend on what refresher training or CPD you are required to complete. RTO's will provide documentation to confirm you have completed the required training. Occupational associations may require you to complete a written or online log of your CPD activities. The online logs normally have the option for you to print out your record for your own purposes, which may include providing a copy to any relevant party. There may need to be legislative amendments to make this clearer for what is acceptable to prove your compliance and for employers to ask for.

WHERE?

Will I have a choice of which RTO's and Occupational Associations I want to be involved with?

The Coal Competence Board intends to assess and endorse suitable providers for the training and CPD. The choice of providers will be dependent on how many are endorsed and the number required to service the proposed system. You can then choose the provider that can best deliver training and CPD to you.

WHEN?

How soon will this new system start?

There is no set date for the start up of the proposed system. The Board will first have to consider feedback that it receives in response to this discussion paper. The proposed system must then be finalised and submitted to the Minister for Mineral Resources for approval. It is planned for the system to be approved to commence operation in the first half of 2010.

HOW?

Will I have to regularly renew my Certificate of Competence and what does it cost?

There is no renewal of Certificates required and no ongoing fee to retain your certificate.

If I am not satisfied with the training and CPD that I receive, who can I complain to?

The first step should be to complain to the RTO or occupational association involved in attempt to resolve the issue. If you cannot resolve the issue with them, then you can make a complaint in writing to the Coal Competence Board. The Board will have a procedure to handle complaints against providers so as to resolve them to the agreement of both parties.

What happens if I do not keep up to date with my training and CPD requirements?

Firstly, the RTO or occupational association you may be involved with, will contact you to resolve the outstanding training or CPD. It is your responsibility to resolve the deficiency with them.

Your employer has the responsibility to ensure you receive training and development to remain competent in performing the specified function safely. This means that the employer should regularly check that you are up to date with the certificate conditions requirements. If you are not, then the deficiency must be resolved by you to continue working in the specified function, within a timeframe determined with your employer, but no longer than 12 months.

The Board's primary role is to oversee the overall effectiveness of the system for certificate holders and employers. However, this does not mean that the Board will not fulfil its legislative functions, where it becomes aware that a certificate holder is no longer competent and is risking their safety and health, and that of others. It can advise the Minister of this situation, who can take steps to suspend or cancel the person's Certificate of Competence, as allowed for already under the *Coal Mine Health and Safety Act 2002 and Regulations 2006*.

WHY?

Why do I have to do this extra training and CPD, when my employer currently trains me for everything I need to know on the mine site I am working at?

The Certificate of Competence is issued for the holder to be authorised to perform a specified function at any coal mine in NSW. It is important for the certificate holder to retain the general, industry wide required skills and knowledge to be able to work at any coal mine. There is also a need for certificate holders to be aware of hazards and controls that may not apply to the present mine site where they are working. Circumstances at the mine site may change so that the certificate holder may be able to use their knowledge for the early detection and control of the new hazard, which was not foreseen in the site Health and Safety Management system, or identify better ways to control them.

It is appreciated that some training carried out by your employer will be the same or equivalent to that of RTO's and occupational associations. RTO's and occupational associations have systems to assess and recognise this, so that you are credited for it, instead of having to attend their equivalent training and CPD or similar.

Why do I have to do more training after successfully holding my Certificate of Competence so far?

The training and CPD proposed under the new system will help ensure that you continue to perform safely in your specified function and support safe mining. Given the rate of change in the workplace and technology, it is important for all certificate holders to be up to date and aware of safety issues that can occur at any stage in a coal mine.

7. KEY ISSUES FOR STAKEHOLDER CONSIDERATION

The purpose of this discussion paper is to seek views from stakeholders on the design and content of the proposed system for the ongoing training and CPD of certificate holders. It is acknowledged that each stakeholder may identify different issues of varying importance, according to their situation. The Board is interested in receiving comments from as many stakeholders as possible across the NSW Coal Mining Industry.

The Public Comment Template (Appendix B) is designed to assist individuals and organisations to provide feedback on the background and elements for the proposed system. It is planned that by stakeholders using the template, the various responses can be quantified and differences highlighted. This will enable the Coal Competence Board to better use the feedback in reviewing the design and content of the system before a final version is determined. Further consultation may then take place with key stakeholders in the NSW coal mining industry to finalise the details of the system proposed and gain support for its introduction.

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- Coal Competence Board Panels of Examiners
- Coal Services Pty Limited
- Industry & Investment NSW Mine Safety Operations & Mine Safety Performance
- Engineers Australia and Mine Electrical & Mine Mechanical Engineering Society
- Mine Managers Association of Australia
- NSW Mining Industry Skills Association (MISA)
- NSW TAFE
- Robin Hopps

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APPENDICES

Appendix A - Certificates of Competence for Statutory Specified Functions

Appendix B - Public Comment Template for Discussion Paper

Appendix C - Maintenance of Competence Research Report

APPENDIX A - Certificates of Competence for statutory specified functions

The Coal Competence Board continues to issue Certificates of Competence, as specified evidence, to enable the holder to carry out functions at a coal mine, as listed below in an extract from clause 162 of the *Coal Mine Health and Safety Regulation 2006*:

Specified function	Specified evidence of competence
Functions of a manager of mining engineering at an open cut mine	Certificate of competence to be a manager of an open cut mine or a manager of a mine
Functions of a manager of mining engineering at an underground mine	Certificate of competence to be a manager of a mine
Functions of a manager of electrical engineering at an underground mine	Certificate of competence to be a mine electrical engineer
Functions of a manager of mechanical engineering at an underground mine	Certificate of competence to be a mine mechanical engineer
Functions of a mining supervisor	<p>FOR AN UNDERGROUND MINE:</p> <p>Certificate of competence to be a deputy, or</p> <p>Certificate of competence to be an under manager of a mine, or</p> <p>Certificate of competence to be a manager of a mine</p> <p>FOR AN OPEN CUT MINE:</p> <p>Certificate of competence to be an examiner of an open cut mine, or</p> <p>Certificate of competence to be a manager of an open cut mine, or</p> <p>Certificate of competence to be a manager of a mine</p>
Functions of a qualified electrical engineer	<p>Where electrical plant in any underground parts of the coal operation is concerned or where electrical effects may be transferred to the underground parts of the coal operation—the evidence of competence required to be a manager of electrical engineering determined by the Minister (<i>Note added: this evidence is the Certificate of Competence Electrical Engineer</i>)</p> <p>Where electrical plant on the surface part of the coal operation is concerned—either the evidence of competence required to be a mine electrical engineer determined by the Minister (<i>Note added: this evidence is the Certificate of Competence - Electrical Engineer (Surface)</i>) or registration on the National Professional Engineers Register (administered by Engineers Australia)</p>
Functions of a qualified mechanical engineer	<p>Where plant or structures in the underground parts of the coal operation are concerned—the evidence of competence required to be a manager of mechanical engineering determined by the Minister (<i>Note added: this evidence is the Certificate of Competence Mine Mechanical Engineer</i>)</p> <p>Where plant or structures on the surface part of the coal operation is concerned—either the evidence of competence required to be a mine mechanical engineer determined by the Minister (<i>Note added: this evidence is the Certificate of Competence to be a Mine Mechanical Engineer (Surface)</i>) or registration on the National Professional Engineers Register</p>

There are other functions that clause 162 refers to, such as tradespersons and Ventilation Officers & Engineers, for which the Board does not issue a certificate or licence. The Board is not considering introducing continuing professional development (CPD) and training requirements for these functions at present. Other mining functions are not prescribed in the regulations, such as mining surveyors, who are administered by the Board of Surveying & Spatial Information (BOSSI), under the *Surveying Act 2002*. The BOSSI Board operates a CPD programme for surveyors, which is a condition of their ongoing registration.

APPENDIX B – Public comment template

The Proposed Training and CPD System for Certificate of Competence holders in the NSW Coal Industry

TO: Name: Secretary, Coal Competence Board Mail: PO Box 344 HRMC NSW 2310 Fax: (02) 4931 6706 Email: coalcompetence.board@industry.nsw.gov.au	FROM: Name: (position title & company): _____ _____ Postal Address: _____ Phone: _____ Fax: _____ Email: _____
Closing date: 6 November 2009	Date of submission: _____

SPECIFIC COMMENTS

Index Number	Page	Comments
ISSUE 1 – RISK MANAGEMENT OF CERTIFICATE HOLDER COMPETENCE Do you think the proposed system adequately assists certificate holders performing specified functions to remain competent? Yes / No (circle). Please comment below to support your response, if necessary		
2(b)	7	

Index Number	Page	Comments
<p>ISSUE 2 – PROPOSED SYSTEM PARAMETERS</p> <p>Are the objectives for the proposed system suitable and adequate? Yes / No (circle)</p> <p>If no, how do you suggest they be changed or additional objectives added?</p>		
3(a)	10	
<p>ISSUE 3 – TRAINING AND CONTINUING PROFESSIONAL DEVELOPMENT REQUIREMENTS</p> <p>Is the training and/or CPD planned for each group of certificates suitable? Yes / No (Circle)</p> <p>Is the use of RTO's and occupational associations appropriate? Yes / No (Circle)</p> <p>Please comment below to support your responses, if necessary</p>		
3(d)	12	

Index Number	Page	Comments
<p>ISSUE 4 – STANDARDS FOR CPD SCHEMES AND TRAINING</p> <p>Are the Coal Competence Board standards proposed, in particular for occupational associations, to be involved in the proposed system appropriate? Yes / No (circle)</p> <p>If no, what improvements or additions are suggested?</p>		
3(e) & (f)	13	
<p>ISSUE 5 – REQUIREMENTS FOR UNDERTAKING ONGOING TRAINING AND CPD</p> <p>When the individual is not performing a specified function requiring their certificate, is the proposed system appropriate in setting out the options for the certificate holder to continue attending training and CPD? Yes / No (circle)</p> <p>If no, what better ways are there to manage these situations?</p>		
3(g)	13	

Index Number	Page	Comments
<p>ISSUE 6 – SYSTEM COMPLIANCE</p>		
<p>Are the present arrangements and proposed initiatives sufficient to ensure system compliance ? Yes / No (circle)</p> <p>If no, what different/amended measures are required?</p>		
<p>3(i) & 3(j)</p>	<p>14 & 15</p>	
<p>ISSUE 7 – MUTUAL RECOGNITION REGISTRATIONS</p>		
<p>Is the approach to involving those, who have registered interstate/New Zealand certificates in NSW, in the proposed system effective? Yes / No (Circle)</p> <p>If no, can you offer any suggestions, if any, on how they can be best included?</p>		
<p>3(k)</p>	<p>16</p>	

Index Number	Page	Comments
<p>ISSUE 8 – IMPLEMENTATION OF PROPOSED SYSTEM</p>		
<p>Is the introduction of the proposed system and individuals performing specified functions expected to comply within 12 months a feasible approach?</p>		
<p>Yes / No (Circle)</p>		
<p>If no, can you offer suggestions on how it could be best implemented and in what timeframe?</p>		
<p>3(l)</p>	<p>16</p>	