

# CMSI Consultation Response

## Respondent Details

NAME

Anonymous

COUNTRY

United Kingdom

PERMISSION

Yes, CMSI can disclose my anonymous feedback.

STAKEHOLDER

Industry / trade organisation

ORGANISATION

Anonymous

## COMMENTS & QUESTIONS BY DOCUMENT

Document:  
Governance

### 13. What is the role of National Panels?

COMMENT:

*Given the proposed national panels are not mandatory, what is the priority of the CMSI in this regard? How will the CMS incentivise their creation?*

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COMMENT:

*• The governance system would benefit from more precision and pragmatism in certain areas on how it will be operationalized. For example, how will 'with due regard to ensuring participation across different commodities, geographies and company size' be balanced with 'diversity criteria in line with the principles outlined in section 2 should be considered in the appointment process of the Board and its committees and will be developed in due course'?*

*• The spirit of multi-stakeholder governance initiatives can at times be compromised due to the imbalance of resources available across the different constituents. Consideration must be given on how to ensure in particular non-industry actors are sufficiently resourced (time; travel & subsistence expenses) to incentivise actively participate in the committees.*

*• The public grievance mechanism would be better placed in the governance document, rather than the assurance document.*

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### 7. How will the Board make decisions?

COMMENT:

*The transition period for the Copper Board to be replaced by relevant commercial or stakeholder interests should be stipulated upfront, rather than "in due course" which is too vague.*

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QUESTION 1

**The governance principles that guided the development of the governance model are inclusive, effective, credible, impact-driven, pragmatic and efficient. From your perspective, does the proposed governance model meet expectations for consistency with these principles?**

Response: 2: Below expectations

QUESTION 2

**Does the proposed governance model ensure no single group is able to unduly influence decisions?**

Response: unsure

Document:  
Assurance

#### 4. Consolidated Standard External Assurance Process

COMMENT:

*There should be a dedicated section for “remote assessments”, instead of this being included in the “site visits” section. As currently written, there is a risk that there is too much subjectivity around when remote assessments can be triggered that could be mitigated through a more prescriptive process.*

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#### 6. Public Grievance Mechanism

COMMENT:

- *The public grievance mechanism would be better placed in the governance document, rather than the assurance document.*
- *As far as possible, the CMSI’s public grievance mechanism should seek to meet the relevant requirements of the Grievance Mechanism PA set out in the CMS. At a minimum, the public grievance mechanism should be designed to meet the eight UNGPs’ effectiveness criteria for such mechanisms. These emphasise legitimacy accessibility, etc. (see glossary for full details), and protection against discrimination or reprisals for those raising grievances, supported by confidentiality to protect their identity.*
- *The public grievance mechanism should also publicly disclose the number and types of issues and concerns raised through the grievance mechanism and types of actions taken in response, resolution and/or remediation of such issues, considering provisions for confidentiality and protection of complainants.*

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QUESTION 1

**From your perspective, does the Assurance process meet your expectations of a robust, credible, replicable and transparent approach?**

Response: 2: Below expectations

Public grievance mechanisms needs to be more robust and aligned with UNGP effectiveness criteria.

Document:  
Standard

## Introduction

### COMMENT:

- *Although definitions have been provided for “foundational”, “good” and “leading” practice levels, there are inconsistencies in the way requirements are assigned to the different levels. This necessitates more prescriptiveness around the underlying principles for allocation of requirements to each level. It also necessitates a benchmarking exercise to better understand what is current foundational, good and leading practice in the metals and mining sector, as well as what are prevailing regulatory requirements.*
  - *There are many requirements that have been placed in the “leading practice” category that relate to well-established practices in the metals and minerals sector. Leading practice should be reserved for best practice actions only that fall beyond current established practices and contribute towards moving the needle on the issue.*
  - *Requirements around remedy should only be assigned to the “leading” level if the company has gone well beyond its duty.*
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### COMMENT:

- *We support the approach of the CMS to include both management systems and performance areas. However, we find the current approach to embed the management systems into the PAs risks losing visibility of the management system. We recommend that management systems should be a separate PA, which would ensure a more systemic and cohesive approach to managing ESG risks that it is auditable. Importantly, it would ensure a risk-based approach is embedded in a company/facility’s own operations and the supply chain (currently the CMS applies risk-based due diligence only to supply chains) and would allow for prioritisation of salient risks based on likelihood and severity. Our proposal would be to replace the approach currently proposed in the draft CMS with Criteria: Management Systems and Criteria 2: Risk Assessment as set out in the Copper Mark’s Risks Readiness Assessment version 3.0.*
  - *It would be helpful to further consolidate some of the requirements as they might become at time redundant. Mainly in the social section where there can be >7 requirements per level.*
  - *It would be helpful to organize all requirements in a manner that reflects the logical order of implementation of actions. For example, if one requirement is to publicly commit to avoid risks x and y; and another requirement is to identify risks x and y; then the logical order would be to first identify, and then to publicly commit.*
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## Performance Area 16: Artisanal and Small-Scale Mining

### COMMENT:

- o *The requirements under this PA need further deliberation. The logic behind the assignment of requirements to different levels is unclear.*
  - o *We propose that the PA would be more robust if it were better aligned with Criterion 21 under the Copper Mark’s Risk Readiness Assessment version 3.0.*
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## Performance Area 2: Business Integrity

### SECTION: 2.1 Legal Compliance, Good Practice

### COMMENT:

*Introduce a requirement: Where conflicting requirements exist, Facilities should follow the stricter of the requirements and seek means of providing the highest level of protection to the environment and human rights in alignment with the UN Guiding Principles on Business and Human Rights.*

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### **Performance Area 3: Responsible Supply Chains**

SECTION: 3.1 Responsible Supply Chain (applicable to all facilities), Foundational Practice, 2

COMMENT:

*• It is unclear what the requirement to “design a system to prioritise sustainability risks associated with the Facility’s business relationships’ aims to achieve. We propose it should be deleted and only the following requirement should be retained: “Identify, assess, and prioritise the most significant parts or segments of the Facility’s supply chain where the severity or likelihood of sustainability risks is high or very high. Parts or segments of the supply chain refer to countries, value added activities, suppliers, commodities or others.”*

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### **Performance Area 5: Human Rights**

SECTION: Glossary and Interpretive Guidance

COMMENT:

*Additional reference to include: UN Guiding Principles Reporting Framework.*

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COMMENT:

*o Given that the human rights issues most relevant to mining and metals sector are set out in individual PAs (e.g. Child Labour and modern slavery, rights of workers, diversity, equity), it is unclear what the added value of including a PA on human rights is. Additionally, the PA lacks any reference to salient human rights issues.*

*o If the PA is retained, we propose that this would be better framed as “Human Rights Due Diligence”. However, our preference would be for the CMS to adopt the approach we proposed above. This would mean deleting the Human Rights PA and introducing Criteria 1 and 2 on Management Systems and Risk Assessment as set out in the Copper Mark’s Risks Readiness Assessment version 3.0 Criteria guide. This would allow for a holistic approach to HRDD, and would also account for the interactions between environmental and human rights risks.*

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### **Performance Area 6: Child Labour and Modern Slavery**

COMMENT:

*We do not support the inclusion of a combined PA that includes both child labour and modern slavery. These are separate and distinct issues that most often have different root causes and that necessitate different measures to prevent, mitigate and remediate the impacts. Additionally, combining the two issues presents challenges to undertaking risk-based due diligence to identify salient risks based on severity and likelihood. This is because a company may identify forced labour as a salient issue, but not child labour.*

*o We find the term “modern slavery” problematic as this is not a term defined in international instruments. We would instead propose that this is labelled as “Forced Labour” and that this is term is defined in a separate PA, distinct to child labour.*

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QUESTION 1

**Does the scope, content, and narrative style of the consolidated standard meet your individual expectations and the collective industry expectation for responsible production practices?**

Response: 2: Below expectations

QUESTION 2

**Do the requirements meet your expectations for being sufficiently clear to support consistent and practical implementation and to achieve necessary performance improvement?**

Response: 2: Below expectations

QUESTION 3

**From your perspective, does the three-level performance structure (Foundational, Good, Leading) of the Consolidated Standard meet your expectations for providing an effective on ramp and clear articulation of good practice and effective path to continuous improvement?**

Response: 2: Below expectations

Document:  
Claims

QUESTION 1

**We would value perspectives on a few additional questions related to threshold of performance associated with achievement claims. Please click here/ see page 11 of Reporting and Claims Policy.**

Response: No Response \begin{quote} • In the second consultation draft, we recommend providing illustrative examples to ensure the interpretation of the threshold proposals. This will ensure that before offering a view, this is interpreted correctly across all consultees. For example, “applicable PAs” creates opportunity for misinterpretation. • Response to Question A “Beyond the types of claims and reports described above, is a more gradual on-ramp appropriate in the transition to incentivise early and rapid uptake of the Consolidated Standard and avoid companies staying out of the standard until they can meet the high bar for the Performance Claim?”: The question is too vague to allow for an informed response and would need to be addressed in the second consultation draft. What would a “gradual on-ramp” look like in practice? However, we generally support some phase-in option • Response to Question B “Within the example thresholds above, or other thresholds, should there be Performance Areas that must be at Good Practice (for example, the Tailings Management Performance Area) and/or should there be specific requirements within some of the Performance Areas that must be met in order to meet the threshold for the Performance Claim?”: We support the introduction of a core set of PAs, whereby participating companies must meet at least all ‘foundational level’ requirements within each core PA. The core set should include all PAs relating to governance (e.g. corporate requirements; business integrity) and those that have the potential to lead to irremediable harm (e.g. Child Labour and Modern Slavery/Forced Labour; Safe, Healthy and Respectful Workplaces; Emergency Preparedness and Response; Tailings Management. Note that we have proposed that a new criteria should be added on Management Systems and Risk Assessment, which in this case we would propose as part of the core set of PAs. • Response to Question C “Is there value in recognising leading practice through a higher-level claim, such as a claim that is attained when Good Practice or Leading Practice is achieved across all Performance Areas? Or, if not a higher-level claim, are there other ways to incentivise the progression from Good Practice to Leading Practice within the Consolidated Standard?”: We support the principle of recognising leading practice through a higher-level claim. We would propose establishing a threshold for achievement of leading practice across PAs, rather than stipulating achievement of 100% leading practice across all PAs. This is because establishing 100% overlooks the fact that a company implements a risk-based approach whereby it focuses efforts and investment on its most salient risks and therefore it may not be necessary to achieve leading practice across all PAs.\end{quote}