

# CMSI Consultation Response

## Respondent Details

NAME

David Brereton

COUNTRY

Australia

PERMISSION

Yes, CMSI can disclose my feedback, name, and organisation.

STAKEHOLDER

Academia

ORGANISATION

Not Specified

## COMMENTS & QUESTIONS BY DOCUMENT

Document:  
Standard

### General comment on Performance Area

SECTION: General

COMMENT:

*We have recently co-authored an article in the journal Resources Policy entitled "An essay on mining and the moral obligation not to harm others", which raises issues that we consider to be relevant to the Consolidated Mining Standard Initiative (CMSI). A PDF copy is attached. The article can also be accessed at: <https://bit.ly/4ewx3Gc>.*

*In our article we observe that while the terms "harm" and "harm avoidance" are increasingly being utilised in the global mining industry in relation to occupational health and safety, avoidance of harm has not been given the same priority when it comes to dealing with the social impacts of mining. We argue that this is not a morally defensible position. We also challenge the notion that harms to some can be "offset" by providing benefits to others. Corporate behaviours that cause or contribute to the harming of people "outside the fence" should no longer be tolerated or considered an unavoidable cost of development.*

*The CSMI provides a unique opportunity to promote harm avoidance as a key objective of social performance management in the global mining sector. However, the current draft of the Standard does not provide the requisite clarity on this issue.*

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COMMENT:

*The consultation draft largely avoids using the terminology of harm in favour of the blander term "adverse impact". This term does not have the same moral force as "harm" and is also too broad in its scope, given that "adverse" impacts can range from minor disruptions through to potentially life changing consequences. In our view, significant adverse impacts on people and/or the environment should be called for what they are: harms. Using this terminology elevates impacts for attention and provides -or should provide -an imperative to take preventive or remedial action.*

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COMMENT:

*Paradoxically, the draft standard does propose a harm-focused approach to identifying and assessing risks. Specifically, the Glossary defines risks as “[p]otential adverse impacts that a Facility could cause, contribute or be directly linked to, and states that “[r]isk may be defined as the combination of the likelihood and potential scope and severity of harm” (our emphasis). If harm - or potential harm - is the key criterion for ranking risks, why not include a clear statement in the Standard itself that avoidance of harm to people and communities, as well as to workers and the environment, should be a priority for companies?*

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COMMENT:

*The draft standard defines adverse impacts as “negative effects on human rights or the environment that the Facility could cause, contribute to, or to which it is directly linked”. As we argue in our published paper, it is problematic to equate harm solely with “negative effects on human rights’. People may experience a significant reduction in well-being without specific rights necessarily being infringed. Conversely, there may be instances where some rights are infringed but this does not have significant consequences for peoples’ overall well-being.*

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SECTION: Glossary

COMMENT:

*There is very little guidance in the draft standard on what constitutes a “negative effect on human rights’. Instead, readers are directed to the UNGPs, which state in Principle 12 that:*

*“human rights -understood, at a minimum, ... [are] those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.”*

*The commentary on Principle 12 does provide some more information on what falls under the rubric of the International Bill of Human Rights, but this is done at a high level and is likely to be of limited utility for people who are not versed in the intricacies of the contemporary human rights discourse. To address this, the Overarching Glossary for the CMSI should include a more detailed explanation of what is encompassed by the term “human rights’, and, conversely, what constitutes a “negative effect on human rights’.*

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COMMENT:

*Recommendation: Consider adopting a high-level definition of “harmful impact” along the lines of the following:*

*“a significant detrimental effect that the facility has had, is having, or could have, on the well-being of people and their ability to enjoy their human rights, and/or on the physical environment”.*

*“People” in this context could include employees, contractors, and individuals and groups in adjacent and connected communities.*

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SECTION: Intent

COMMENT:

*The intent statements that accompany each standard are sometimes focused on activities rather than outcomes. For example, the intent of PA4 is expressed (in part) as:*

*Assess environmental and social risks and impacts of new projects and significant changes to or expansions of existing operations[and] develop management plans in consultation with affected stakeholders.*

Presumably, the reason for doing this is to minimise - or ideally avoid altogether - the risk of causing harm to people and communities and, on the positive side, ensure that impacted communities benefit from new projects and expansions. This should be made explicit.

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SECTION: NA

COMMENT:

*For most of the Performance Areas (PAs) the elements of “foundational practice” generally include a requirement that the company/facility has made a public commitment of some kind. For example, in PA9 (Safe, Healthy and Respectful Workplaces) one of the requirements for demonstrating “foundational practice” is that companies/facilities “publicly commit to safe, healthy and respectful workplaces that are free from psychological harm, including bullying, harassment, discrimination and violence, including gender-based violence.” Similarly, for PA5 (Human Rights), the requirement is to “publicly commit to respecting human rights consistent with the UNGPs. However, for the two PAs that relate most directly to social impact management (PA4 and PA13), there is no equivalent requirement for companies to make any form of public commitment about avoiding/minimising harm (or even “adverse impacts’). This is a significant omission.*

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COMMENT:

*Recommendation: In order to meet the benchmark for “foundational practice” in PA4 and PA13, companies/facilities should be required to demonstrate that they have made a public commitment to “avoid causing harm to people in adjacent and connected communities across the mining life cycle” (or words to that effect).*

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COMMENT:

*We also note that in two recently published guidance documents (Tools for Social Performance, 2022 and Human Rights Due Diligence Guidance, updated 2024) the ICMM have stated that one of the aims of social performance management is to “[a]void harm to people and communities from company activities throughout the mining life cycle”. If this is indeed an aim, why not incorporate this language into the proposed Standard?*

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COMMENT:

*Recommendation: In those PAs relating to the Social Performance function, replace the term “adverse impacts’ with “harmful and potentially harmful impacts’.*

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COMMENT:

*The bar is often set too low when it comes to specifying what constitutes ‘foundational’, ‘good’ and ‘leading practice’.*

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COMMENT:

*The approach taken is not always consistent across the performance areas (which may partly be a function of different working groups taking responsibility for individual PAs).*

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### **Performance Area 13: Community Impacts and Benefits**

COMMENT:

*Recommendation: For those PAs most relevant to the Social Performance function, ensure that harm avoidance is explicitly framed as an objective. For example, the Intent Statement for PA 13 (Community Impacts and Benefits) could be expressed as follows:*

*Continually monitor the impacts of projects on affected communities to ascertain if people are being harmed, or at a heightened risk of being harmed, by mining-related activities. Where harms, or potential harms, have been identified, collaborate with impacted communities and other relevant actors (such as government) on designing and implementing appropriate prevention, mitigation and remedial measures. In parallel, work to contribute to the economic and social benefits of affected communities by identifying their development priorities and opportunities to enhance social and economic wellbeing.*

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## **Performance Area 4: New Projects, Expansions and Resettlement**

SECTION: NA

COMMENT:

*Recommendation: Modify the wording of PA4 ('Risk and Impact Assessments of new Projects and Expansions') to specify that baseline studies and ESIA's include an assessment of the potential for projects and project expansions to cause harm to people and communities. Proponents should also be expected to identify the measures that will be taken to avoid causing or contributing to harmful outcomes*

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