

# CMSI Consultation Response

## Respondent Details

NAME

Anonymous

COUNTRY

South Africa

PERMISSION

Yes, CMSI can disclose my anonymous feedback.

STAKEHOLDER

Industry (upstream)

ORGANISATION

Anonymous

## COMMENTS & QUESTIONS BY DOCUMENT

### QUESTION 1

**Overall does the revised version of the Consolidated Standard system (including Standard, Assurance Process, Governance Model\* and Claims Policy) meet your expectations for improvement relative to the original public consultation version?**

Response: 3: Meets expectations

The Standard is well placed for success. The Governance model is excellently balanced to protect all stakeholder interests. Some residual issues remain in the Assurance Process and Claims Policy.

### QUESTION 2

**From your perspective, does the updated Consolidated Standard system, including Standard, Assurance Process, Governance Model\* and Claims Policy meet expectations for driving performance improvement across the industry at a global scale?**

Response: 5: Significantly exceeds

Once in operation, it will be the most balanced, implementable yet challenging Standard for the Sector.

Document:  
Assurance

## 4. Consolidated Standard External Assurance Process

SECTION: 4.2 Planning, 4.2.2 Review and Acceptance of Facility Applications

COMMENT:

*The requirement to submit with 3-6 months is redundant (being a simple choice) and should updated "within 6 months. This allows facilities to submit these any time before the 6 months.*

*The requirement for facilities to continue publishing their self-assessment reports in the years between assurance cycles is of limited to no value (being a self-declaration). It also creates material additional administrative burdens on the Facilities and/or corporate entity (who may have dozens of sites in their portfolio to maintain) and the CMSI Secretariat itself. It's also not clear what the purpose these would serve, nor what sanction(s) could potentially apply if there were some systemic regression (which is sometimes unavoidable)?*

*Instead, consideration should be given for the external assurer to maintain level of oversight/check-in with the facility in those intervening years to ensure management of high-risk issues remain on track. This is similar to established practice in ISO-based system auditing & certification schemes i.e. (surveillance audits). If significant failures of or systemic regressions arise in that surveillance check, then an update of the facility (overall score/status) might be considered by the CMSI Secretariat.*

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SECTION: 4.2 Planning, 4.2.4 Self

COMMENT:

*Its unclear whether only individual performance scores for each subsection needs to be published (implied), or whether details of how the results were obtained for each of those subsections (and supporting evidence)? Publishing anything more than a table of scores would be inappropriate/too early for the first and any subsequent self assessment reports.*

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SECTION: 4.6 Continual Improvement Plan, 4.6.2 Re

COMMENT:

*Ref. 4.6.2 Re-Assurance*

*The examples provided for what could constitute Significant Changes are acceptable, however so for the examples of what could constitute Significant Events. These can be once-off misfortunate events, which are not reflective of deep systemic failures.*

*In particular some environmental event examples provided in the footnote 5 e.g. release to groundwater is already occurring across industry in older unlined TSFs and process ponds - sometimes with regulatory approval and 'contamination of land or spoil has no threshold - which could mean even small vehicle oils spills. It's recommended these Footnote 5 be deleted, and that this is left to interpretations that evolve over time, from Assurer feedback.*

*In addition, being required to provide confidential and/or legally privileged information to the Secretariat may be legally prohibited in some circumstances e.g. if related litigation is underway, revealing personal information, etc.*

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SECTION: 4.6 Continual Improvement Plan

COMMENT:

*As written, the continual improvement requirement is ambiguous - its unclear whether Facilities must achieve (as a minimum) 100 % of Good Practice in two consecutive assurance cycles, or progress with its published improvement plan in two consecutive cycles (with attainment of 100% of Good Practice in an unspecified time)? If it's the former that is intended (100% of GP in 2 assurance cycles), this ignores the highly dynamic nature of mining and processing operations, which naturally can lead to fluctuations in sustaining performance at 100% of Good Practice or fully reaching that level in 2 assurance cycles.*

*Finally, the sentence "Facilities that have met the Good Practice Level and achieved a Performance Claim are encouraged but not required to publish an Improvement Plan for achieving the Leading Practice Level." should be deleted. This risks weakening the perceived value of Good Practice, which is already a stretch to obtain. It also risks being leveraged by external observers and stakeholders against facilities, exposing them*

to unnecessary reputational harm and the CMSI" own recognition is that Leading Practice is a level of practice which goes beyond responsible industry good practice.

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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**

The external assurance process is robust it will be costly, disruptive and challenging for many facilities to progress through - particularly those with less financial and human resources. It may actually become a hinderance to widespread adoption and result in very delayed uptake. The value of continued Self-Assessments, beyond the initial one, is questioned and an alternative is proposed. Additional clarity around the continual Improvement plan is required, as is cleanup of the section related to Significant events.

Document:  
Standard

### **Performance Area 01: Corporate Requirements**

SECTION: 1.4 Risk Assessment, Towards Good Practice, 2

COMMENT:

*The PA item requires assessment of Facility-level risks including those associated with the applicable Performance Areas of the standard. This could lead to a grey area around applicability and create scope for disagreement during external assurance.*

*In addition, mine sites may be required to create and maintain non-value adding lists of justifications about why certain PAs are not applicable (e.g. ASM in Australia) - simply to satisfy auditors. It should also be borne in mind that some PAs are directed at corporate rather than Facility level, others actually cover risk controls themselves or issues which result from failed risk controls e.g. Grievance Mechanisms and still others relate to policy of reporting-level issues rather than facility-level risks e.g. DE&I, water reporting, etc. Suggest changing the wording FROM: "including at a minimum, those identified in the applicable Performance Areas in this Standard." TO "with due consideration of applicable Performance Areas covered in this Standard."*

### **Performance Area 03: Responsible Supply Chains**

SECTION: 3.1 Responsible Supply Chain (applicable to all Facilities), Good Practice, 5

COMMENT:

*The practicality and legality of publicly disclosing identified (actual or potential) supply chain risks is both practically challenging and may be legally prohibitive. In addition to risk ratings being inherently subjective, the disclosure may need to cover legally sensitive or privileged information. Public disclosure with the stipulated level of detail implies a portal to host information, which must be updated. Replicating these over dozens of facilities makes maintain accuracy challenging which in itself creates legal exposure for the facility/company. In addition, SEC-listed corporates primarily disclose key risks in their Form 20-F submissions and any additional public risk-related disclosures must remain consistent. This could imply an ongoing obligation to re-align and resubmit 20F documents. Confidentiality obligations in supplier contracts may prohibit information disclosure, and finally corporates are exposed legal liability if disclosing risks and failing to address*

them -which, being in the supply chain, is not within their full control. Suggest including a qualification that disclosure remains at a high level, e.g. statistics and not be required at the detailed/supplier or risk-specific level.

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SECTION: 3.1 Responsible Supply Chain (applicable to all Facilities), Good Practice, 6

COMMENT:

*It may be implied, but there should be a clear proviso for where (actual) 'offsite' human rights impacts (uniquely related to the Facility) have been brought to that Facility's attention - and even then, there may be a limited role for the Facility, having no jurisdiction outside of its own premises. Alternately, this could be re-focused to apply to supplier-related HR impacts that occur on the Facility's premises.*

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## **Performance Area 04: New Projects, Expansions and Resettlement**

SECTION: 4.2 Land Acquisition and Resettlement, Good Practice, 1

COMMENT:

*Need to provide clear guidance on the use of 'if applicable' regarding the Livelihood Restoration Plan - to eliminate the potential for ambiguity, especially during assurance.*

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SECTION: 4.2 Land Acquisition and Resettlement, Good Practice, 5

COMMENT:

*This will be a challenge to Assure, as development benefits at a given facility are open to all community members. It might make sense to put more focus on the livelihood restoration plans as these plans are only dedicated to PAPs. This can be restated in an inclusive manner also highlighting that these benefits are not only open to PAPs.*

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## **Performance Area 05: Human Rights**

SECTION: 5.1 Human Rights, Leading Practice, 3

COMMENT:

*Collaboration in cases where HRDs have a strong anti-mining agenda is inherently impossible. Collaboration would however be possible with HRDs that support development and wish to engage constructively. These two differences in HRD stance should be recognised and the PA requirement(s) reworded accordingly.*

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## **Performance Area 16: Artisanal and Small-Scale Mining**

SECTION: 16.1 Artisanal and Small, Scale Mining (ASM), Leading Practice

COMMENT:

*Important to distinguish here between legal and illegal ASM, as having access to sites of the latter for research purposes, can be dangerous in some circumstances.*

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## Performance Area 18: Water Stewardship

SECTION: 18.1 Water Management and Performance, Good Practice, 6

COMMENT:

*Specifying “at defined intervals” in this Requirement is unhelpful as climate model projections, that inform site-level risk assessments, use a series of “current” CMIP models (CMIP 6 being the most current). The frequency of these CMIP updates are however irregular - typically spanning several years apart, which makes a routine/cyclical update infeasible. Moreover, re-doing these risk assessments at a higher frequency than CMIP model releases is redundant and even with new CMIP updates, there are often limited material changes between model iterations. RECOMMEND replacing “at defined intervals” WITH “and revise as appropriate”. Alternatively, delete the REQUIREMENT as the approach is better covered (duplicated) in PA 20.2, TGP 2.*

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SECTION: 18.1 Water Management and Performance, Towards Good Practice, 6

COMMENT:

*In the absence of prevailing host country regulatory compliance requirements, consider defaulting to/adopting the Effluent Guidelines (Table 1) of the 2007 IFC Environmental, Health, and Safety Guidelines MINING.*

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## Performance Area 19: Biodiversity, Ecosystem Services and Nature

SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Good Practice, 1

COMMENT:

*As written, the first sentence could imply assessing communities’ impacts on ecosystem services e.g. over-harvesting of resources. This is probably not intended. Rephrase to emphasise assessing potential risks and impacts from the Facility on communities’ use of Ecosystem Services.*

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SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Good Practice, 2

COMMENT:

*As Requirement 2 currently reads, it implies addressing ALL risks and impacts in the AOI. Which is unreasonable and placed an unfair burden where there are overlapping impacts from third parties in the AOI. If this is indeed the expectation, it presents potential for politically charged / negative outcomes by attempts to regulate/govern/restrict the actions of third parties. Tailor the requirement to only applying to those risks and impacts undisputably caused by the facility.*

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SECTION: 19.1 Biodiversity, Ecosystem Services and Nature, Good Practice, 3

COMMENT:

*It’s an unnecessary level of granularity to call out “specifying actions to address invasive alien species where present” in this REQUIREMENT. This could be especially problematic in the AOI which may have overlapping impacts from third parties e.g. invader species farming & others land change activities?*

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QUESTION 1

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

Response: 3: Meets 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: 3: Meets expectations

Some content as currently written, will be impractical to implement and could make external assurance challenging.

QUESTION 3

**From your perspective, does the three-level performance structure (Towards Good Practice, Good Practice, Leading Practice) 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: 5: Significantly exceeds

Document:  
Claims

### 3. Claims

SECTION: 3.1 Types of Claims

COMMENT:

*The requirement to demonstrate performance improvement through each assurance cycle is acceptable. However, the implied requirement for facilities to attain Good Practice in ALL applicable Performance Areas of the Consolidated Standard, should be a facility/ corporate entity's commercial or policy decision e.g. when pursuing a Performance Claim for commercial reasons, or to satisfy key stakeholder requirements. In addition, the Performance Claim threshold to have a minimum 80% aggregate score (at Good Practice) plus at least 4 Performance Areas at (full) good practice level, effectively sets a "de facto" minimum performance attainment level in the Claims Policy, at which commercial rewards of such a claim can be enjoyed. Those facilities who reach and/or exceed this (minimum) threshold performance, but DO NOT wish to pursue a Performance Claim (being satisfied with holding an Assured Claim), should be permitted to remain above this threshold (as a valid objective) and should NOT be artificially forced to attain 100% of Good Practice in 2 assurance cycles -as required in section 4.6 of the Assurance Process. This approach would allow for a clearer differentiation between those facilities and their pathway to their end objective i.e.: Facilities using a Performance Claim (must attain 100% of Good Practice requirements in one additional assurance cycle after surpassing the minimum threshold), and those who have reached and continue to maintain their performance above that same (minimum) threshold. It should also be considered that "forcing" all CMSI participants to reach the same ultimate level performance (100% Good Practice, with the only difference being the time taken) may weaken the perceived value of attaining and using a Performance Claim (relative to facilities using an Assured Claim, but at the same level of performance). Finally, the pathway to 100% of Good Practice in this section (no time limit) is inconsistent with the requirement in section 4.6 of the Assurance Process, which stipulates this is required within 2 assurance cycles.*

REF. Section 3.1.2.1. Aggregated Score.

*As noted in Section 3.2 of this submission, there is limited value in Self- Assessed results and scores. These should be dispensed with, which would also lighten the administration and disclosure burden of loading and differentiating between Assured and self-assessed aggregate scores.*

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SECTION: 3.2 Self

COMMENT:

*The requirement for facilities to continue publishing their self-assessment reports in the years between assurance cycles is of limited to no value (being a self-declaration). It also creates material additional administrative burdens on the Facilities and/or corporate entity (who may have dozens of sites in their portfolio to maintain) and the CMSI Secretariat itself. It's also not clear what the purpose these would serve, nor what sanction(s) could potentially apply if there were some systemic regression (which is sometimes unavoidable)?*

*Instead, consideration should be given for the external assurer to maintain level of oversight/check-in with the facility in those intervening years to ensure management of high-risk issues remain on track. This is similar to established practice in ISO-based system auditing & certification schemes i.e. (surveillance audits). If significant failures of or systemic regressions arise in that surveillance check, then an update of the facility (overall score/claim) might be considered by the CMSI Secretariat.*

*The requirement to submit with 3-6 months is redundant (being a simple choice) and should updated "within 6 months. This allows facilities to submit these any time before the 6 months.*

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#### QUESTION 1

**Does the level of transparency provided by the Claims Policy (i.e. through disclosing scores for each Performance Area, aggregated scores to indicate overall progress towards Good Practice, and Performance Claims) meet your expectations to incentivise continuous performance improvement?**

Response: **2: Below expectations** \begin{quote}While the Claims Policy requirements for those entities wishing to make use of Performance Claims (and use a related logo) seems appropriate, no alternative 'endpoint' has been carved out for those entities who have surpassed the 'recognised' minimum performance threshold but do not wish to use a Performance Claim/Logo. As currently written, Facilities are all required to reach and maintain 100% of Good Practice - which weakens the perceived value of using a Performance Claim versus those that don't. This also ignores the highly dynamic nature of mining and processing operations, which naturally can lead to fluctuations in sustaining performance at 100% of Good Practice.\end{quote}