



# Ministerial Advisory Panel on Safety Legislation Reform AGENDA

Date:	Wednesday 24 September 2014	Time:	8:30am – 10:30am
Venue:	Fraser Room 4, Fraser Suites - Level 1 10 Adelaide Terrace, East Perth		

Item No.	Item	Who
1.	Actions of previous meeting - MAP meeting dates 2015	Chair
2.	Safety Legislation Reform update - Legislation section numbering – Model vs. consecutive - Work Health and Safety (Resources) Bill - Regulatory Impact Statement update	Simon Ridge
3.	WHS Resources Bill comparison table - feedback	Simon Ridge
4.	Interaction between PHMPs and PCPs in Model WHS legislation	Michael Tooma
5.	Management and Supervision Workshop	Simon Ridge
6.	Other business	Chair
7.	<i>Next Meeting: 10 December 2014 8:30am – 10:30am</i>	

## Information Papers:

- 1A. Actions list
- 1B. MAP meeting dates - 2015
- 2. Safety Legislation Reform progress update
- 3. WHS Resources Bill comparison table
- 4. Interaction between PHMPs and PCPs in Model WHS Legislation
- 5. Management and Supervision Workshop report



File No: A1375/201301

## ACTIONS LIST – 24 September 2014

### Ministerial Advisory Panel

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#### Active Actions

ACTION ITEM	DUE DATE	STATUS
<b>1. Meeting 26 March 2014</b>		
DMP to invite an officer from WorkSafe to join MAP when the discussions on the regulations commence.	TBA	WorkSafe to be invited when discussions on regulations commence.
<b>2. Meeting 23 July 2014</b>		
DMP to confirm whether WA will be adopting the model legislation requirements on fitness for work.	24 Sep 2014	Fitness for work requirements will be provided when drafting instructions for the regulations are prepared.
Drafting instructions relating to health monitoring and consultation to be provided to MAP.	24 Sep 2014	Health monitoring requirements will be provided when drafting instructions for the regulations are prepared. Consultation requirements will be the same as Part 5 in the model WHS Act.
DMP to consider Working Groups' recommendations and provide advice to the Minister.	24 Sep 2014	MAP to discuss Management and Supervision Workshop feedback, then DMP will prepare draft advice to Minister and circulate to MAP for comment.

#### Completed Actions

ACTION ITEM	DUE DATE	STATUS
<b>1. Meeting 22 January 2014</b>		
Panel members to confirm their proxies before 28 January 2014.	28 January 2014	<b>Completed</b> Proxies approved by the Minister
Include in terms of reference out of session tacit approval of minutes	1 February 2014	<b>Completed</b> Terms of reference amended and approved by Minister
The Panel would like clarity what the WA government is not willing to compromise on in the WHS legislation.	26 March 2014	<b>Completed</b> Confirmation of the issues the government is not willing to consider changing in the WHS legislation: Previously, the government had views on four specific areas - penalty levels, union right of entry, health and safety representatives' capacity to direct the cessation of work, and reverse onus of proof in discrimination matters. The Department understands that the level of penalties is subject to some discussion, but the position on the other items remains unchanged.
Mr Tooma's presentation to be distributed to Panel members with the minutes.	28 January 2014	<b>Completed</b> Emailed to members on 28 January 2014

ACTION ITEM		DUE DATE	STATUS
	Project team to provide a diagram of the restructure proposed within RSD.	26 March 2014	<b>Completed</b> Distributed with the agenda for meeting 26 March 2014
	If Safework Australia put out a table of amendments for the mining WHS legislation, the Panel would like a copy.	26 March 2014	<b>Completed</b> Safework Australia does not have a table for the mining amendments. DMP will continue to monitor.
	Panel members to provide feedback on the Petroleum Discussion Paper by 12 February 2014.	12 February 2014	<b>Completed</b> Comments received. Summary provided with MAP agenda papers for 26 March meeting.
	MAP members would like to be kept informed of the RSD internal restructure.	ongoing 23 July 2014	<b>Completed</b> DMP provided updates on the progress of the RSD restructure at all MAP meetings up to 23 July 2014.
<b>2.</b>	<b>Meeting 26 March 2014</b>		
	Department to provide details (the 5% changes) of changes between the national model and the WHS Resources Bill.	29 Aug 2014	<b>Completed</b> Comparison table emailed to MAP 25 August 2014, comments due 15 September 2014, for discussion at MAP meeting 24 September 2014.
	Project team to send an invitation and details of the Professor Sparrow presentations to members. Members to respond with their preference to attend one of or all of the sessions.	26 March 2014	<b>Completed</b> Email to members sent 26 March 2014
	MIAC minutes to be attached to the meeting papers.	2 April 2014	<b>Completed</b> Link to MIAC minutes sent 26 March 2014
	Project team to send the link to the model regulations and members to come back to DMP by the end of April with any concerns.	30 April 2014	<b>Completed:</b> Email containing links to the Safework Australia website sent to members 2 April 2014
	Project team to coordinate members for the working groups, and terms of reference for the groups.	30 April 2014	<b>Completed:</b> ToR drafted, nominations received, meetings scheduled.
	Department to meet with Nick Zovko to discuss the GHS.	30 April 2014	<b>Completed</b>
	DMP to meet with APPEA to discuss the petroleum legislation.	30 April 2014	<b>Completed</b> Meeting held 9 June 2014: Agreed that a Regulatory Impact Statement will be used to consult stakeholders on options for consolidating safety legislation
	Miranda Jane Taylor to provide a copy of pilot training course on MHFs critical risks from Victoria.	28-May-2014 23 July 2014	<b>Completed</b> Available for any members who would like a copy.
	Greg Stagbouer to provide a copy of the Defence training model.	28-May-2014 23 July 2014	The RAAF Training Program is not available as it is a restricted document.
<b>3.</b>	<b>Meeting 28 May 2014</b>		

ACTION ITEM		DUE DATE	STATUS
	A working group on management and supervision will be formed after the current groups complete their tasks.	24 Sept 2014	<b>Completed</b> Management and Supervision Workshop held 15 September 2014. Feedback to be discussed at MAP meeting 24 September 2014.
	The dangerous goods presentation to be sent to members with the minutes.	4 June 2014	<b>Completed</b>
	Ian Fletcher to meet with the CEO of the CME and possibly the CME safety committee to discuss their view on the legislation.	23 July 2014	<b>Completed</b> - Meeting held 9 July 2014. Letter from CME distributed to MAP members with agenda papers.
<b>4.</b>	<b>Meeting 23 July 2014</b>		
	Richard Kern to provide some working examples of PHMPs and PCPs.	5 Sep 2014	Attempted to obtain some working examples, but none are available at this time.
	Michael Tooma to prepare paper on how the PHMP and PCP interact.	5 Sep 2014	<b>Completed</b> Paper received 5 September 2014 for discussion at MAP on 24 September 2014.
	DMP to review statistics relating to incidents involved with guarding under the current regulatory arrangements, including other Australian jurisdictions that require the use of a tool to remove guarding	24 Sep 2014	<b>Completed</b> To be discussed at MAP meeting 24 Sep 2014.
	If Minister issues a Media Release about the Resources Safety Bill, DMP to distribute to MAP.	TBA	<b>Completed</b> - Media release sent to members 13 August 2014.
	DMP to schedule meetings for December 2014 through to mid-2016 and amend MAP Terms of Reference to reflect this.	8 Aug 2014	<b>Completed</b> - 2015 meeting dates set. 2016 will be diarised towards the end of 2015. Terms of reference updated and uploaded to the DMP website.
	MAP members to provide submissions on the preferred legislation numbering and sequencing approach by 6 August 2014.	6 Aug 2014	<b>Completed</b> MAP preferred numbering based on the Model WHS Act – email sent to confirm 7/8/2014



## **Ministerial Advisory Panel on Safety Legislation Reform**

### **Meeting dates 2015**

<b>Meeting No.</b>	<b>Date</b>	<b>Time</b>
1.	Wednesday 28 January 2015	8:30 – 10:30am
2.	Wednesday 25 March 2015	8:30 – 10:30am
3.	Wednesday 27 May 2015	8:30 – 10:30am
4.	Wednesday 29 July 2015	8:30 – 10:30am
5.	Wednesday 30 September 2015	8:30 – 10:30am
6.	Wednesday 25 November 2015	8:30 – 10:30am

<b>Venue:</b>	<b>Fraser Suites - Level 1 10 Adelaide Terrace, East Perth</b>
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Government of **Western Australia**  
Department of **Mines and Petroleum**

## **Ministerial Advisory Panel on Safety Legislation Reform**

# **Progress update: 24 September 2014**

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### **Legislation numbering – model vs. consecutive**

At the 23 July 2014 MAP meeting, members were asked to provide comment by 6 August 2014 on whether the proposed Work Health and Safety (Resources) Bill should be numbered based on the Model WHS Act; or use consecutive numbering with the sections having a different order of priority.

The majority of responses indicated a preference for numbering based on the Model WHS Act, to provide consistency with WorkSafe and other jurisdictions. DMP will therefore draft the legislation in line with the preferred approach.

### **Work Health and Safety (Resources) Bill**

The drafting instructions for the Work Health and Safety (Resources) Bill are being finalised.

The Department continues to liaise with WorkSafe for consistency in the two pieces of legislation. WorkSafe will soon have its green Bill out for public comment, for a period of three months.

### **Management and Supervision workshop**

The Ministerial Advisory Panel requested that DMP host a workshop on management and supervision requirements at mines sites. The workshop was held on 15 September 2014, with 26 representatives from industry, unions and the regulator attending.

The issues raised at the workshop will be taken into consideration during development of the Work Health and Safety (Resources) legislation.

### **Regulatory Impact Statement – consolidation of safety legislation**

A public tender was issued in August 2014, seeking a provider to manage the Regulatory Impact Statement consultation process to identify the preferred option for consolidating the safety legislation for mines, petroleum and major hazard facilities. The Department will assess the tenders shortly.

It is expected that the RIS consultation process will be completed by 31 January 2015.



## Work Health and Safety (Resources) Bill:

### *Key principles and changes from MSIA, NMSF, Model WHS*

No.	Topic/Key Principle	Current Legislation (MSIA)	Proposed Legislation WHS (Resources) Act	Comments/Explanation
1.	<b>Application of the Act</b>	The Act applies to mining operations as defined in s.4. It generally covers mining, exploration, process facilities, ports support facilities etc.	Proposed definition of mining operation will cover all these facilities.	The definition proposed by the NMSF has been modified to align with the MSIA.
2.	<b>Specific exclusions from mining operations</b>	Railways, public roads	Railways, public roads, air travel from/to mines, prospecting under Miners Right	Air travel has been added as it is covered by other specialist agencies.
3.	<b>Transfer/decision on application of the MSIA or OSHA</b>	Currently done by joint instrument of declaration.	Additional powers given to the Minister to declare a work site to be a mining operation.	There had been issues with the determination of jurisdiction under the two Acts in the past. A new provision has been added similar to proposed new NSW WHS (Mines) Act.
4.	<b>Approval to commence a mining operation</b>	SME approval required as per s. 42. Generally based on the approval of a Project Management Plan.	Approval from the regulator will be given on submission of 'Outline of Safety Management System'. The Act specifies the details to be included in the Outline of SMS.	NMSF proposed development of Safety Management System which is a detailed document. The 'Outline of Safety Management System' covers aspects similar to the current 'Project Management Plan' and replaces it.
5.	<b>Primary Duty of Care</b>	Section 9 covers primary duty of care for an employer. The obligation is that of an employer towards its employees, including contractors and labour hire workers.	The primary duty of care is for a Person Conducting a Business or Undertaking (PCBU) towards <u>all</u> workers, including contractors and labour hire workers.	The duty of care concept has been simplified and made broader. It has removed the ambiguity in the relationship between an employer and employee.
6.	<b>Mine Operator</b>	The Principal Employer, who has the mining right and overall control of the mine, has specified duties, including the duty of care for all employees.	The Mine Operator is designated as the PCBU and has similar control and duties as the Principal Employer.	The concept of Mine Operator has been recommended by the NMSF and will replace Principal Employer.

No.	Topic/Key Principle	Current Legislation (MSIA)	Proposed Legislation WHS (Resources) Act	Comments/Explanation
7.	<b>Other Duty Holders</b>	<p>The Act places duties on designers, manufacturers, importers and suppliers of any plant, building or structure and substances.</p> <p>There is no specific provision covering Remote Operations Centres (ROCs).</p>	<p>Similar duties are placed on PCBU's (i.e. not necessarily the PCBU at the mine) that design, manufacture, import, supply and install plant.</p> <p>A PCBU in control of a Remote Operations Centre will have prescribed duties. However, the employees at the ROC (not at a mine site) will be covered under general WHS legislation (WorkSafe).</p>	Control measures for Remote Operations Centres will now be covered under the new legislation.
8.	<b>Management of risk</b>	The general risk management is through Duty of Care and the Project Management Plan. There are no specific provisions in the Act requiring risk management.	There are specific requirements for hazard identification, management of risk, use of hierarchy of control, review and maintenance of risk control measures.	<p>The risk-based approach means that the onus is on the mine operators and all other PCBU's to identify and manage their risks. This will assist in reducing prescription in the legislation.</p> <p>This is the most significant change to the regulatory framework.</p>
9.	<b>Safety management system</b>	The Project Management Plan (PMP) requires management of identified risks at the time of commencement of mining operations. There is no requirement to update this document as the mining operations expand or change. The PMP is not an enforceable document.	<p>The Safety Management System (SMS) is an enforceable and living document. The legislation will require updating of the document as and when mining operations change or expand, or new hazards are identified.</p> <p>The SMS must be prepared and reviewed in consultation with workers (i.e. workers covered by the Act).</p>	The SMS is where the risks of each mine site are identified and managed. It includes a number of components, including Principal Hazard Management Plans (PHMPs) and Principal Control Plans (PCPs), amongst others.



No.	Topic/Key Principle	Current Legislation (MSIA)	Proposed Legislation WHS (Resources) Act	Comments/Explanation
10.	<b>Management and supervision of mines / Statutory Positions</b>	The Act prescribes statutory positions and advises on other management appointments. These include Registered Manager, Quarry Manager, Underground Manager, etc.	The Act makes provision for Site Senior Executive (replaces Registered Manager) and Exploration Manager. Other statutory positions will be listed in the regulations, and will be similar to those in the MSIA.  The mine site's SMS must ensure that effective management and supervision is provided at all times whilst workers are working.	The proposed legislation will have less prescriptive requirements for onsite management, but more stringent requirements for frontline supervision. It provides some flexibility to deal with site-specific situations.
11.	<b>Competency requirements for statutory positions</b>	The Registered Manager and Exploration Manager require no prescribed competencies.  Quarry Manager, Underground Manager, Underground Supervisor, Surveyor, and Winding Engine Driver all require competency certificates issued by the Board of Examiners.  The Act and regulations also provide qualifications and experience requirements for certain other positions.	Site Senior Executive and Exploration Manager will require prescribed qualifications in risk management and legislation.  Practising Certificates for Quarry Manager, Underground Manager, Underground Supervisor, and Surveyor will be required under the regulations.	The three major mining states (WA, QLD, NSW) are working together to ensure alignment of competency requirements for statutory positions.  Practising Certificates will continue to be issued by the Board of Examiners (WA).
12.	<b>Penalties</b>	Penalties are covered under s.4A.	Penalties will be aligned with WA Work Health and Safety legislation for general industry.	Historically, penalties for mining and general industry have always been aligned.
13.	<b>Incident notification</b>	Serious accidents, specified occurrences and potentially serious occurrences are to be reported immediately.  Lost Time Injuries (LTI) must be reported at the end of the month, with employment statistics and lost shift data.	Notifiable incidents, which include serious injury or illness, dangerous incidents and LTIs, must be reported immediately.  Employment statistics and lost shift data will be reported quarterly.	Definition of serious injury is an addition in the WHS Act. The new Act also specifies a list of dangerous incidents, which has been expanded to include those specific to the resources industry.

No.	Topic/Key Principle	Current Legislation (MSIA)	Proposed Legislation WHS (Resources) Act	Comments/Explanation
14.	<b>Incident investigation</b>	No specific requirements for Principal Employer, employer or Registered Manager to investigate reportable incidents and accidents.	There is an obligation on the Mine Operator to investigate all notifiable incidents and report them to DMP.  The SMS must be reviewed and updated to prevent recurrence.	The new requirements were developed through the NMSF.
15.	<b>Health and Safety Representatives</b>	Safety and Health Representatives and Committees are covered under Part 5.	The provisions for Health and Safety Representatives and Committees are similar to current requirements.  There is an additional provision for the PCBU to consult with workers.	WA is not adopting the ability for Health and Safety Representatives to stop work. The current and proposed legislation already gives power to the worker/employee to stop work if it is unsafe to continue.  The consultation requirement is aligned with WHS legislation for general industry.
16.	<b>Administration of the Act by the regulator</b>	State Mining Engineer is the chief administrator of the MSIA.  The Act prescribes three types of inspectors – District, Special, Employees.	The regulator (Commissioner Resources Safety) will be the chief administrator of the Act.  There will only be one type of inspector, called an Inspector.  The concept of corresponding regulator and corresponding legislation has been introduced for sharing of information and recognition of certain approvals.	These changes were made to align with the WHS Act for general industry.  The concept of corresponding regulator/legislation means, for example, that plant registered in other jurisdictions can be recognised by DMP.
17.	<b>Powers of regulator and inspectors</b>	Inspector powers are outlined in s.21 of the Act.  The State Mining Engineer has all of the powers of inspectors and the ability to request an independent study report under s.45 of the Act at the Principal Employer's expense.	The new Act is similar to the present provisions under MSIA.  The regulator has the additional power to request the mine operator to conduct an independent study, audit, test or investigation at the operator's expense, and this must be submitted to the regulator.  The new Act also includes provisions for search warrants.	The additional provisions have been recommended by the NMSF.

No.	Topic/Key Principle	Current Legislation (MSIA)	Proposed Legislation WHS (Resources) Act	Comments/Explanation
18.	<b>Enforcement measures</b>	Inspectors have powers to issue improvement and prohibition notices.  The Act requires persons under s.81 to ensure that an accident site for a serious or fatal accident is not disturbed	The inspectors have powers to issue improvement, prohibition and non-disturbance notices.	The new non-disturbance notice provides powers to inspectors to ensure that an incident site is not disturbed for a specified period.
19.	<b>Limitation period for prosecutions</b>	Proceedings for an offence against the Act must be commenced within three years after the offence was committed.	The new legislation reduces the period to two years.	Aligned with the model WHS Act.
20.	<b>Officer's liability</b>	Under s.100A, officers of corporations are liable in cases of gross negligence.	The new Act places duty on officers of a corporation to exercise due diligence to ensure that the PCBU complies with any duty or obligation under the Act.	Aligned with the model WHS Act.
21.	<b>Mining Industry Advisory Committee (MIAC)</b>	MIAC is a statutory committee currently under s.14A of the Occupational Safety and Health Act 1984.	MIAC will be transferred to the new WHS (Resources) Act	This is to bring MIAC under the legislation administered by DMP, rather than WorkSafe.
22.	<b>Evidentiary provisions</b>	Covered under s.98 of MSIA	Replicated from MSIA	Added to save time in Court.  Not currently in WHS Act.
23.	<b>Publication of information by regulator</b>	No provision for this in MSIA	To enable the regulator to publish information for shared learnings and education purposes.	This has been adopted for the proposed WHS (Mines) Act in NSW. <b>See Appendix 1</b>
24.	<b>Board of Inquiry</b>	No provision for this in MSIA. However, the Minister has the power to institute inquiries and has done so in the past.	Enables the Minister to establish a Board of Inquiry to inquire into serious incidents and dangerous occurrences; any practice or safety matter which may adversely affect the health and safety of persons at a mine; or any emerging or systemic issues affecting health and safety of persons at a mine.	Added by the NMSF.  Not adopted by WorkSafe for general industry.

## Provisions from Model WHS not adopted in WA Work Health and Safety (Resources) Act

No.	Section of Model WHS	Comments/Explanation
25.	<b>s.67 Deputy Health and Safety Representatives</b>	<ul style="list-style-type: none"> <li>DMP considers that there is already an adequate number of Health and Safety Representatives in the mining industry to cater for absenteeism.</li> <li>MSIA does not contain provision for Deputy Safety and Health Representatives and this has not been an issue, given the high number of Safety and Health Representatives in the WA mining industry</li> <li>WorkSafe is also not adopting this.</li> </ul>
26.	<b>s.85 Health and Safety Representatives may direct that work cease</b>	<ul style="list-style-type: none"> <li>WA is not adopting the ability for Health and Safety Representatives to stop work.</li> <li>The current MSIA and proposed legislation already gives power to the worker/employee to stop work if it is unsafe to continue.</li> </ul>
27.	<b>s.93 Provisional Improvement Notice may give directions to remedy a contravention</b>	<ul style="list-style-type: none"> <li>A Safety and Health Representative may not possess the necessary expertise.</li> <li>Management of the mine site are best placed to give directions to remedy a contravention.</li> <li>MSIA does not provide for this.</li> </ul>
28.	<b>s.103 Part does not apply to prisoners</b>	<ul style="list-style-type: none"> <li>Not applicable to mining.</li> </ul>
29.	<b>s.170 Places used for residential purposes</b>	<ul style="list-style-type: none"> <li>Not applicable to mining.</li> </ul>
30.	<b>s.178 Receipt for seized things</b> <b>s.179 Forfeiture of seized things</b> <b>s.180 Return of seized things</b> <b>s.181 Access to seized things</b>	<ul style="list-style-type: none"> <li>Moved to regulations as they are too prescriptive for the Act.</li> <li>These are mainly of an administrative nature.</li> </ul>
31.	<b>Division 4 Damages and Compensation</b> <b>s.182 Damage etc. to be minimised</b> <b>s.183 Inspector to give notice of damage</b> <b>s.184 Compensation</b>	<ul style="list-style-type: none"> <li>MSIA does not include this.</li> <li>It is inevitable that inconvenience and possible loss will be incurred as a result of inspectors exercising their right of entry under the Act. For example, certain operations may need to cease whilst the inspector is inspecting machinery.</li> <li>Civil action is always available to any person who feels that they have suffered a loss or damage.</li> </ul>
32.	<b>Division 5 Remedial Action</b> <b>s.211 When regulator may carry out action</b> <b>s.212 Power of the regulator to take other remedial action</b> <b>s.213 Costs of remedial or other action</b>	<ul style="list-style-type: none"> <li>Current legislation already enables the regulator to institute legal proceedings where a person has not complied with the Act.</li> <li>It is inappropriate for the regulator to take remedial action where a person has not complied with the Act.</li> </ul>

No.	Section of Model WHS	Comments/Explanation
33.	<b>Part 11 Enforceable Undertakings</b> <b>s.216 Regulator may accept WHS undertakings</b> <b>s.217 Notice of decision and reasons for decision</b> <b>s.218 When a WHS undertaking is enforceable</b> <b>s.219 Compliance with WHS undertaking</b> <b>s.220 Contravention of WHS undertaking</b> <b>s.221 Withdrawal or variation of WHS undertaking</b> <b>s.222 Proceeding for alleged contravention</b> <b>s.232 (1)(c)</b>	<ul style="list-style-type: none"> <li>Current legislation enables enforceable undertakings <u>following</u> a prosecution, rather than as an alternative to prosecution.</li> <li>It is inappropriate for the regulator to permit enforceable undertakings in lieu of prosecution, as this process may be subject to misuse.</li> </ul>
34.	<b>s.231 Procedure if prosecution is not brought</b>	<ul style="list-style-type: none"> <li>WorkSafe is also not adopting this, and it adds no value to existing measures.</li> </ul>

Item 23:

### ***Publication of information by regulator***

- (1) *The regulator may publish any information concerning any of the following matters:*
  - (a) *the conviction of a person for any offence against the WHS laws;*
  - (b) *any investigation conducted under the WHS laws of a possible contravention of the WHS laws;*
  - (c) *any action taken by the regulator under the WHS laws for the purpose of enforcing compliance with or preventing a contravention of the WHS laws (including the issue of any notice or the acceptance of any undertaking for that purpose);*
  - (d) *any incident or other matter that may be of relevance to mine operators, persons conducting businesses and undertakings or workers in connection with compliance by them with duties imposed by the WHS laws;*
  - (e) *any matter prescribed by the regulations.*
- (2) *No liability is incurred by the State in respect of anything done in good faith for the purpose of publishing information under this section.*
- (3) *No liability is incurred by a person publishing in good faith information that has been published under this section.*
- (4) *In this section:*  
***liability*** *includes liability in defamation.*

Norton Rose Fulbright Australia  
ABN 32 720 868 049  
Level 18, Grosvenor Place  
225 George Street  
SYDNEY NSW 2000  
AUSTRALIA

Tel +61 2 9330 8000  
Fax +61 2 9330 8111  
GPO Box 3872, Sydney NSW 2001  
DX 368 Sydney  
nortonrosefulbright.com

## Memorandum

<b>From</b>	<b>Michael Tooma</b>	<b>Date</b>	5 September 2014
<b>Direct Line</b>	+61 2 9330 8108		
<b>Email</b>	michael.tooma@nortonrosefulbright.com	<b>Our ref</b>	<b>2784218</b>
<b>To</b>	<b>David Eyre</b> <b>Senior Policy Officer</b> <b>Business Development, Resources Safety</b>  <b>Department of Mines and Petroleum</b> <b>Level 1, 1 Adelaide Terrace East Perth WA</b> <b>6004</b>		
		<b>Your ref</b>	

## MAP Paper

### Explanation of interaction between PHMPs and PCPs in Model Mine Safety legislation

#### 1 Principal Hazard Management Plans (PHMP)

- 1.1 Principal hazards are singled out for close examination because they have the potential to cause an incident with very serious consequences including multiple or repeat fatalities if not adequately controlled, even though the likelihood of the event occurring may be very low. The use of management plans to address principal mining hazards was a key recommendation of the Moura No 2 Warden's Inquiry.<sup>1</sup>
- 1.2 Principal hazards are not always obvious. Therefore, they should be managed in a systematic way. Mine Operators are required to identify principal mining hazards associated with their mining operations and develop PHMPs documenting how these principal hazards are to be eliminated or reduced as far as reasonably practicable.
- 1.3 The following are the prescribed PHMPs under the model laws:
  - (1) Ground/Strata Instability

<sup>1</sup> Report on Accident at Moura No. 2 Underground Mine on Sunday 7 August 1994 – Warden's Inquiry conducted pursuant to section 74 of The Coal Mining Act 1925, conducted before Mr F Windridge, Warden and Coroner (Wardens Court of Queensland)  
APAC-#24159976-v1

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- (2) Inundation and Inrush
- (3) Mine Shafts and Winding Operations
- (4) Roads, other vehicle operating areas and traffic management
- (5) Air quality, airbourne dust and other airborne contaminants
- (6) Fire and Explosion
- (7) Gas outbursts
- (8) Spontaneous Combustion

## 2 **Principal Control Plan (PCP)**

- 2.1 Principal control plans are aimed at coordinating the interaction between various controls that are implemented at the mine. For some principal hazards, the controls are well known. Their proper implementation and maintenance is critical to the safety outcome. It is also important that the overlap between various controls does not itself create additional safety risks. This is the aim of the PCPs.
- 2.2 The following are the prescribed PCPs:
  - (1) Mechanical engineering
  - (2) Electrical engineering
  - (3) Ventilation
  - (4) Explosives
  - (5) Health
  - (6) Emergency Response

## 3 **How PHMPs and PCPs interact**

- 3.1 The best way to think of PHMP and PCPs is to think of them as a matrix. For each PHMP there will be related PCPs that must be maintained to ensure its effective management.
- 3.2 This overlap potentially simplifies the PHMP in that where ventilation is referred to as a control in a PHMP, for example, it would be ventilation implemented and maintained in accordance with the PCP ventilation.



**PHMPs and PCPs interactions**

PHMP	PCPs	PHMP
Fire and Explosion		Gas Outbursts
	Mechanical Engineering	
	Electrical Engineering	
	Ventilation	
	Explosives	
	Health	
	Emergency response	



# Management and Supervision Workshop Report

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## This report documents the observations of the Management and Supervision workshop. Background

The Western Australian Government has committed to overhauling the way safety and health in the resources industry is regulated.

In January 2014, the Minister for Mines and Petroleum established the Ministerial Advisory Panel (MAP) on Safety Legislation Reform, comprised of industry, union and government representatives, to provide advice on the development of safety reforms.

During 2013, the Mines Safety inspectorate at Resources Safety Division, Department of Mines and Petroleum identified issues with onsite management coverage at some mining operations in Western Australia.

In January 2014, following legal advice, the State Mining Engineer wrote to all statutory appointed managers to clarify the interpretation of the *Mines Safety and Inspection Act 1994 (MSIA)* regarding onsite management coverage.

There is some disagreement and concern from industry on this interpretation of the management and supervision requirements in the proposed work health and safety legislation.

This issue was referred to MAP for advice, to assist DMP in developing the new Work Health and Safety (Resources) legislation for Western Australia.

## Role

Workshop participants discussed specific concerns with the current legislative requirements for management and supervision as outlined in Sections 33-38 of the *Mines Safety and Inspection Act 1994 (MSIA)*. The issues raised at the workshop will be used to help guide the new legislative requirements in the WHS Resources legislation.

The following questions were asked of the group and the responses recorded:

- *Any specific concerns with current legislative requirements for management and supervision?*
- *What are the practical difficulties complying with current legislation?*
- *What are the essential principles of management and supervision of a mine site?*
- *Who are the frontline supervisors?*

See Appendix 1 for comments collected at the workshop.

## Attendance

Member groups on the Ministerial Advisory Panel were asked to invite representatives from industry, unions and the regulator to attend the workshop, and 26 people attended.

## Observations and Findings

### Current regulatory framework

Occupational safety and health in the mining industry is regulated by Resources Safety Division of the Department of Mines and Petroleum, under the *Mines Safety and Inspection Act 1994* (MSIA).

Sections 33 to 38 of the Act cover the management and supervision requirements on a mining operation. The Act prescribes:

- Registered Manager – is responsible on a daily basis for the control and supervision for a mine and mining operations, and must reside at a location in relation to the mine which will allow the RM to control and supervise the mine effectively
- Underground Manager – has the responsibility to control and supervise the underground mining operations on a daily basis
- Quarry Manager – has the responsibility to control and supervise the quarry operations on a daily basis
- For commute schedules, the MSIA requires appointment of alternate registered/underground/quarry managers
- If the duty holder or alternate is incapacitated or unavailable to perform the duties, a deputy must be appointed

DMP's experience has shown that competency and availability of frontline supervisors at mining operations should be improved.

Industry's view is that MSIA provisions do not allow adequate flexibility for contemporary operational practices, in particular residential sites.

### Proposed legislation

The proposed Work Health and Safety (Resources) Act will require every mine operator to prepare and implement a Safety Management System (SMS). The SMS is a living document. As a mine site evolves, the SMS must cater for variations in scale, complexity and risks. It must be kept up to date, to reflect current safety systems in place on any given day.

The risk-based approach will put the onus on the mine operator to ensure that effective management and supervision can be provided at all times whilst workers are on site, and detail this in the SMS. This includes management and supervision structure, their competencies and other requirements for the mine.

The new Act will provide details of appointment and duties for Mine Operator, Site Senior Executive and Exploration Manager, with a requirement to have other statutory persons as required by regulations. It provides a degree of flexibility for site-specific situations.

Proposed legislation is likely to have less prescriptive requirements for onsite management, but more stringent frontline supervision requirements.

Statutory positions and their competency requirements are still to be discussed by the three major mining states (WA, QLD, NSW) to achieve consistency.

## Summary of Issues

The complexity and size of the mine play a part in determining the management and supervision processes and structures required. If a site operates 24/7, there should be adequate management and supervision throughout, not reduced supervision on nights and weekends.

Industry questioned the need for statutory position holders to be physically on site 24 hours a day, given that other high-risk industries do not require this. Some managers live within 10-20 minutes of the mine site, with mobile phone and email access. The statutory position manager could instead be on call when away from the site (provided they do not consume alcohol). There could be other supervisors who are competent to supervise and make decisions when the statutory positions are not physically on site. If the Registered Manager can demonstrate adequate management and supervision through an SMS, they can be responsible for it regardless of them being on site.

The new legislation needs to be a mixture of statutory control and a risk-based approach, with mines working out their management and supervision structure and processes through a risk assessment, documented in the site's Safety Management System. The legislation should define the responsibilities and be outcomes-focused, not prescriptive. The SMS should be prepared in consultation with front line workers and include the supervisor's role, competency requirements and level of authority to make decisions.

Current mines safety legislation has not kept up with technology (e.g. communication methods) or new mining techniques (e.g. satellite mines up to 50km from the mine office). There are perhaps too many statutory positions. There are also different standards for open pit and underground mines, with underground being more heavily regulated.

Registered Managers are focused on strategic-level operations, such as implementing the management and supervision requirements. They may have little involvement in day-to-day frontline operations, especially at medium to large mines, as there are other managers and supervisors below them to provide oversight. However, they should still be familiar with operations.

Improved frontline supervision should be a priority. The supervisor understands the nature and hazards of the job, and whether the people can do that job safely and competently. It was also suggested that some of the onus of responsibility and accountability should be placed on supervisors, rather than managers. There should also be increased focus on direct supervision for workshop/maintenance areas, as a number of serious accidents have occurred. There needs to be an adequate handover process from one manager/supervisor to the next, and workers on the site need to know who is supervising each shift. The ratio of supervisors to workers should be appropriate.

Supervisor competency is an issue – there are no specific competency requirements/tickets nor are there regular checks to ensure competency is maintained. There are training courses on the key aspects of supervision. Some core competencies should also be transferable in any supervisory role. Supervisors need relevant experience and knowledge in the area that they are supervising, including:

- Knowledge of the legislation and Codes of Practice.
- Understanding of the work being done and how it should be done.
- Understanding of the site SMS.
- Knowledge and skills in hazard identification and control
- Communication skills (including literacy and language)
- Crisis management skills.

## Recommendation:

**That the Ministerial Advisory Panel note the feedback from the workshop and recommend that that this information be considered when drafting the new Work Health and Safety (Resources) legislation for Western Australia.**

# Management and Supervision

## Workshop participants' comments

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### **Any specific concerns with current legislative requirements for management and supervision?**

- Some Registered Managers have no involvement in day-to-day operations.
- There are no minimum competency requirements for supervisors and Supervisors don't have specific competency tests or tickets.
- Petroleum pipelines on a mining operation – need clarity on whether they have to comply with mines safety legislation requirements for statutory positions on a mining operation
- Do the mining statutory positions/supervisors have the right competency for supervising petroleum pipelines?
- Current legislation hasn't kept up with new technology (e.g. communication methods) or new mining techniques.
- There are two standards – one for open pit, and one for underground. Underground is more heavily regulated.
- Core competencies should be transferable in any supervisory role.
- Mine managers are focussing on high-level operations, not on direct front line supervision.
- Direct supervision needed for workshop/maintenance areas.
- Stakeholders would like to know how supervision for construction will be managed in the new legislation.

### **What are the practical difficulties complying with current legislation?**

- Mining manager's job is more strategic - they don't become involved in the day-to-day operations on the frontline.
- The complexity, size and structure of the mine play a part in determining the role of supervision and management.
- Resident (non-FIFO/DIDO) mine managers live within 10-20 minutes of site. Do we need statutory position holders to be physically on site? There needs to be other supervisors who are competent to supervise when the statutory positions are not physically on site.
- Industry operates 24/7, and they need to ensure that there is adequate management and supervision during the entire time. There needs to be a system that is as good during the week as it is on weekends.
- There needs to be a mixture of statutory control and risk-based approach, with mines working out their management and supervision needs through a risk assessment.
- The law should define the responsibilities and the outcomes.
- There needs to be someone on site implementing the management and supervision requirements and managing the people. Is the mine manager the person on site who is implementing and directly managing staff?
- The implemented management/supervision structure below the mine manager should be outlined in the Safety Management System (SMS).
- Underground mining – why do the supervisors on site not have the power to make the decision on site in the absence of a statutory position?
- What is the intent of the appointments process? Residential managers believe that they can manage sites without actually being on site or appointing a deputy.
- What is the difference between a statutory manager being in a mining camp which could be 20 mins drive from site, or a residential where it's 5 or 10 mins drive off site? Both have access to email, telephone, etc

- Do mines need to have someone there on FIFO, but not residential?
- The mining industry is the only industry that has this kind of management framework.
- Do we have too many stat positions?
- The Registered Manager and Underground Manager are not on the front line. So does this person need to be there 24 hours a day, when there are others supervising directly?
- There needs to be a greater focus on frontline supervisors.
- The competency requirements of supervisors are low. It needs to be experienced and skilled 'supervisors' who are appointed, not just the best or oldest tradesperson on the shift.
- Instead of putting the responsibility and accountability on the manager, why not put some of the onus on direct supervisors?
- When legislation was developed the mine manager's office was usually close to the pit. Now there are satellite mines that could be up to 50 km from the mine manager's office. The current legislation hasn't kept up with this change.

### **What are the essential principles of management and supervision of a mine site?**

- Skills/competencies to be able to do their jobs.
- Appropriate processes to manage the risk on the site, or manage foreseeable events.
- Person able to manage a crisis.
- If you have an SMS does the manager have to be on site?
- Managers need to be familiar with operations on site.
- Can the manager present an SMS and details on the management of the site to DMP?
- The people on site need to know who the responsible person is for supervising each shift.
- If the RM can demonstrate management and supervision through an SMS, they can be responsible for it regardless of them being on site.
- The supervisor understands the competence of the people, the job at hand, nature of the job, what hazards, and whether the people can do that job safely.
- If the RM leaves the site, can an RM appoint someone who isn't a deputy, and leave them in charge? No, needs someone that has the training, experience in the activity to be able to make decisions.
- There needs to be an adequate handover process from one manager/supervisor to the next.
- When things change, there needs to be a competent person on site to make a decision on how to proceed.
- Do we need to specify in the regulations a minimum amount of time a statutory position holder should be on site? Then on other days an alternate person is appointed as manager?
- Employers want clarity on what is required.
- The legislation should be outcomes-focussed and not prescriptive.
- Mines shouldn't rely on one person for supervision.
- Supervisors need to have relevant work experience in the area that they are supervising:
  - Knowledge of the Act and Regs / law.
  - Understanding of the work being done.
  - Understanding the site SMS.
  - Knowledge and skills in hazard identification.
- Supervisors need to know their delegation authority i.e. they aren't taking risks above their role.
- Management of change.
- The frontline manager/supervisor should be in the field not in an office checking emails – they should be engaged in the workplace.
- Should competency be regularly tested / audited and refresher courses offered?
- Communication skills, literacy, language.
- People identify risk but don't put the controls in place.
- Need to understand the systems, and addressing the adequacy of those.
- Safety is a priority.

- SMS should articulate the role of the supervisor and their authority.
- Consultation with workers is key in the SMSs.
- 10 keys aspects of supervision – training courses run by providers such as IFAP and Aveling.
- How many people will the supervisor be supervising? Can't be too many.
- Core competencies should be transferable in any supervisory role.
- There needs to be a formal process of how the supervisors' competencies are accredited.
- Supervisors on site need to have the resources and authority.

### **Who are the frontline supervisors?**

- Need careful definition of what a supervisor is.
- Someone who makes the decisions and directs work activity.
- Allocates tasks.
- Gives direction.
- Controls how tasks are undertaken.
- Leading hand, supervisor and foreman – who will have the role designated by the law, who will have to have the qualifications? This will be covered in the SMS.
- Not based on title but based on function.
- The supervisor is one level up from work execution.
- Person in control of the activity.
- Should the supervisor also be the person who is working in the role as well, not just stand alone supervising?
- Level of authority.
- There are different principles for supervising small, med, large operations in terms of the number of people.
- Supervisor's role includes communicating to subordinate staff, and up to management.





## MEETING MINUTES:

### Ministerial Advisory Panel on Safety Legislation Reform

<b>Date:</b>	Wednesday, 24 September 2014	<b>Time:</b>	8:30am to 10:30am
<b>Venue:</b>	Fraser Suites, Fraser Room 4 – Level 1 – 10 Adelaide Terrace, East Perth		

#### Present

Mr Ian Fletcher	Independent Chairperson
Mr Simon Ridge	Executive Director, Resources Safety Division, Department of Mines and Petroleum (DMP)
Mr Andrew Chaplyn	State Mining Engineer and Director Mines Safety, Resources Safety Division, Department of Mines and Petroleum (DMP)
Mr Simon Bennison	Chief Executive Officer, Association of Mining and Exploration Companies (AMEC)
Mr Rick Armstrong	Representing, Australian Drilling Industry Association (ADIA) ( <i>proxy for Greg Stagbouer</i> )
Mr Barrie Sturgeon	Representing Australian Pipeline Industry Association (APIA) ( <i>proxy for Kevin Wolfe</i> )
Mr Andrew Woodhams	Director – Environment, Safety & Productivity, Australian Petroleum Production and Exploration Association (APPEA)
Mr Gary Wood	Secretary, Construction Forestry Mining and Energy Union (CFMEU) Mining and Energy Division WA District
Mr Stephen Price	Secretary, Australian Workers Union (AWU)
Mr Richard Kern	Regional Manager Asia Pacific Newmont (representing Chamber of Minerals and Energy WA - CMEWA)
Mr Michael Tooma	Partner, Norton Rose Fulbright
Mr Nick Zovko	Regulatory Policy Manager, Plastics and Chemicals Industries Association (PACIA) ( <i>via teleconference</i> )
Ms Jennifer Low	Policy Adviser OSH and Workers Compensation, Chamber of Commerce and Industry WA ( <i>proxy for Karin Lee</i> )
Mr Lew Pritchard	General Manager Business Development, Department of Mines and Petroleum (DMP)
Ms Jennifer Shelton	Principal Policy Officer, Department of Mines and Petroleum (DMP)

#### Apologies

Mr Glenn McLaren	State Organiser, OHS Advisor, Australian Manufacturing Workers' Union (AMWU)
Mr David Eyre	Senior Policy Officer, Department of Mines and Petroleum (DMP)
Mr Kevin Wolfe	Business Development Manager, Monadelphous representing Australian Pipeline Industry Association (APIA)
Mr Greg Stagbouer	Director, Australian Drilling Industry Association (ADIA)
Ms Karin Lee	Manager Safety and Risk Services, Chamber of Commerce and Industry WA (CCI WA)
Mr Chris Oughton	Director, Kwinana Industries Council (KIC)

#### Agenda items

Item	Topic	Action
1.	<b>Introduction &amp; Actions from previous meeting</b>	
	<ul style="list-style-type: none"> <li>The Chair welcomed and introduced the new members and proxies.</li> <li>23 July 2014 meeting minutes were approved out of session and uploaded to DMP website.</li> </ul> <p><b>Actions from previous meetings - Attachment 1A:</b></p> <ul style="list-style-type: none"> <li>DMP to consider Working Groups' recommendations and provide advice to the Minister: <i>The management and supervision workshop report to be discussed at</i></li> </ul>	



Item	Topic	Action
	<p><i>item 5. The MAP Chair will prepare advice to the Minister about the recommendations from all of the working groups.</i></p> <ul style="list-style-type: none"> <li>• Department to provide details (the 5% changes) between the national model and the WHS Resources Bill: <i>The comparison table was sent to MAP members, with comments due by 15 September 2014. To be discussed at item 3.</i></li> <li>• A working group on management and supervision will be formed after the current groups complete their tasks: <i>A workshop was held on 15 September 2014. Feedback to be discussed at item 5.</i></li> <li>• Richard Kern to provide some working examples of PHMPs and PCPs: <i>Attempted to obtain some working examples, but none are available at this time.</i></li> <li>• Michael Tooma to prepare paper on how the PHMP and PCP interact: <i>Paper was circulated with agenda. To be discussed at item 4.</i></li> <li>• DMP to review statistics relating to incidents involved with guarding under the current regulatory arrangements, including other Australian jurisdictions that require the use of a tool to remove guarding: <i>Andrew Chaplyn provided a paper at the meeting and explained the analysis of statistics collected from other jurisdictions. The members agreed that guarding must be secured by fixture but not necessarily requires a tool for removal. There was agreement that the new regulations should reflect the current situation which allows flexibility for the operator. Any guarding should require a purposeful process or action to remove, if guarding isn't sufficient, inspectors should issue notices.</i></li> <li>• The MAP meeting dates were circulated with the agenda as Attachment 1B.</li> </ul>	
<b>2.</b>	<b>Safety Legislation Reform Update</b>	
	<ul style="list-style-type: none"> <li>• A progress update on the safety legislation reform was distributed to members with the agenda as Attachment 2.</li> </ul> <p><b>Legislation numbering – model v consecutive</b></p> <ul style="list-style-type: none"> <li>• The numbering in the legislation was discussed at the last meeting and decided by members out of session. The majority of MAP members would prefer the numbering in the legislation to be consistent with the model and WorkSafe. This is all subject to advice from Parliamentary Counsel's Office which is responsible for the drafting of the legislation.</li> </ul> <p><b>Drafting instructions for the Bill</b></p> <ul style="list-style-type: none"> <li>• The drafting instructions have been prepared and will be finalised after consensus is reached on a couple of issues to be decided at the meeting today under item 3.</li> <li>• WorkSafe are waiting for the green bill to be drafted which will then be put out for public comment. DMP will continue to liaise with WorkSafe, and will review the feedback it receives on the green bill when it is available.</li> </ul> <p><b>Regulatory Impact Statement – consolidating the safety legislation</b></p> <ul style="list-style-type: none"> <li>• A public tender was issued in August 2014, seeking a provider to manage the Regulatory Impact Statement consultation process to identify the preferred option for consolidating the safety legislation for mines, petroleum and major hazard facilities. It is expected that the RIS consultation process will be completed by 31 January 2015. The consultant will seek input from all member groups represented on MAP. Members requested a copy of the timeline for the RIS consultation.</li> </ul>	DMP to distribute timeline for consultation on the RIS to MAP members.
<b>3.</b>	<b>WHS Resources Bill comparison table - feedback</b>	
	The comparison table was sent to MAP members out of session on 25 August with comments due by 15 September 2014. Simon Ridge explained the items in the table. There was further discussion on the following items:	

Item	Topic	Action
	<ul style="list-style-type: none"> <li>• Gary Wood raised a question as to how the duty of care provision is enforced if an automated piece of equipment causes an accident or incident on a mine site but the control centre with the staff operating the equipment are based in Perth. Simon Ridge advised that any incident involving automated equipment on a mine site would come under the jurisdiction of mines safety including any investigation into the actions of the staff operating the equipment in the offsite control centre. However, the health and safety of the staff in the operations centre is regulated by WorkSafe.</li> <li>• Michael Tooma highlighted an issue occurring in NSWs at present where the executives of a company are not based in the State which makes it difficult to enforce the legislation, and issue notices. This particular case relates to a fatality in NSW. This case is ongoing and MAP should monitor the process.</li> <li>• The Department received a query from the Chamber of Minerals and Energy (CME) about the requirement to include Principle Hazard Management Plans (PHMP) as well as Principal Control Plans (PCP) in the new legislation. CME is concerned that there might be a degree of overlap between the two, and questioned the need for both PHMPs and PCPs. Simon Ridge explained the relationship between the two plans. If a company identifies a hazard in a PHMP, and already has a PCP in place, then they can simply refer the PHMP to the PCP - there is no need to duplicate the work.</li> <li>• CME also asked about the requirements around incident reporting and investigation. They would like to know how this will operate in practice. In the Model WHS Act there is an obligation on the mine operator to report and complete an investigation into notifiable incidents. The reporting requirement is for serious injury or illness, or dangerous incidents, or when the investigation report is requested by the Department. The Department won't require all incident investigation reports to be submitted to the regulator.</li> <li>• The competency requirement for supervisors was another issue requiring further clarification which will be addressed in the regulations. This is being developed through the Tri-State Competency Advisory Committee (TCAC) (WA, QLD, NSW) and needs further policy development. The members suggested that it would be helpful to review the APPEA Safe Supervisor Competency program.</li> <li>• Members queried the current situation with penalty levels in the legislation. Simon Ridge advised that the penalties will be aligned with WorkSafe's for consistency. The Department understands that WorkSafe will adopt the full penalty levels as detailed in the Model WHS legislation. This is a change from the Governments' previous decision to half the penalty levels. However, full penalties are appropriate on safety and health grounds. It is also difficult to identify anything different in the WA occupational health and safety environment that warrants penalty levels that are half those of other Australian jurisdictions. Comparisons have been drawn that if the WA Government does not adopt the full penalties, it would be effectively placing a lesser value on a person's life than in those jurisdictions where the full penalties in the Model WHS Bill have been adopted. Members agreed with this assessment.</li> <li>• CME queried the status of the Mining Industry Advisory Committee (MIAC) in the new legislation. MIAC will remain in legislation however it will be transferred from the <i>Occupational Health and Safety Act 1984</i> to the new work health and safety mines legislation. DMP believes MIAC is better placed in the mining legislation. The role of the committee will not change.</li> <li>• Boards of inquiry – the Minister already has the power to call an inquiry, but it will be formalised by including a provision in the legislation. Members agreed to be consistent with the other jurisdictions in this regard.</li> </ul>	<p>Andrew Woodhams to provide a copy of the APPEA safe supervisor competency program.</p>

Item	Topic	Action
4.	<b>Interaction between PHMPs and PCPs in Model WHS legislation</b>	
	<ul style="list-style-type: none"> <li>• Michael Tooma provided a paper on the interaction between PHMPs and PCPs, which was distributed with the agenda. Michael provided an overview.</li> <li>• PHMPs are defined as high consequence, low frequency hazards associated with mining operations. The legislation requires the operator to come up with the principal hazards that exist on their site, and identify them in the plan. There are a number of hazards that are expressly defined, but not all may apply to the operation, or there may be other hazards that are not prescribed. The list is designed to get the operator to think about whether the hazard is an issue.</li> <li>• PCPs coordinate the interaction between the various controls implemented at a mine. Operators can link the plans by referring to the PCP in the PHMP, there's no need for duplication. It identifies controls implemented to manage risks to health and safety of persons at the mine, and monitors and ensures effectiveness of controls.</li> <li>• A question was raised about the health monitoring of workers as part of the PCP for health. Unions would not like to see the PCBU take things as far as requiring workers to have regular medicals by a company-appointed doctor.</li> </ul>	
5.	<b>Management and supervision workshop</b>	
	<ul style="list-style-type: none"> <li>• The management and supervision workshop report was sent with the agenda as Attachment 5.</li> <li>• The workshop was held on 15 September 2014. Member groups on the Ministerial Advisory Panel were asked to invite representatives from industry, unions and the regulator to attend the workshop, and 26 people attended.</li> <li>• The issues raised at the workshop will be used to help guide the new legislative requirements in the WHS resources legislation.</li> </ul> <p>Simon Ridge made some general observations about issues raised at the workshop:</p> <ul style="list-style-type: none"> <li>• Industry questioned the need for statutory position holders to be physically on site 24 hours a day. However, when the manager/supervisor isn't on site, there should be someone appointed in their place, who has the control, authority and competency.</li> <li>• The new legislation needs to be a mixture of statutory control and a risk-based approach, with mines working out their management and supervision structure and processes through a risk assessment, documented in the site's Safety Management System (SMS).</li> <li>• The SMS should be prepared in consultation with front line workers and include the supervisor's role, competency requirements and level of authority to make decisions.</li> <li>• The statutory position holders may not necessarily be the best placed to be the direct supervisor. Improved frontline supervision should be a priority. The supervisor understands the nature and hazards of the job, and whether the people can do that job safely and competently.</li> <li>• Supervisor competency is an issue – there are no specific competency requirements/tickets nor are there regular checks to ensure competency is maintained.</li> <li>• Roles, responsibilities, competency and training requirements will be developed through the new Tri-State Competency Advisory Committee (TCAC), to ensure a consistent approach between WA, Queensland and New South Wales.</li> <li>• Current mines safety legislation has not kept up with technology (e.g. communication methods) or new mining techniques.</li> </ul>	

Item	Topic	Action
6.	<b>Other business</b>	
	<p>New CEO for NOPSEMA</p> <ul style="list-style-type: none"> <li>Stuart Smith, the former Director General of the Department of Fisheries, has been appointed as the new Chief Executive Officer of NOPSEMA. It would be appropriate to brief Stuart on the safety legislation reform, the role of MAP and how we can work together.</li> </ul> <p>Regulatory Impact Statement – combining safety legislation</p> <ul style="list-style-type: none"> <li>Members asked how the consultation will be conducted and the timing. The consultant will be appointed shortly and DMP hope that they will be able to give a presentation at the meeting in December about how the RIS is progressing.</li> </ul>	<p>MAP to send a letter to Stuart Smith congratulating him on his appointment as CEO to NOPSEMA and set up a meeting to brief him on the reform.</p> <p>Presentation by the RIS consultant at the December MAP meeting.</p>
7.	<b>Next meeting</b>	
	<ul style="list-style-type: none"> <li>The next meeting is <b>Wednesday 10 December 2014, 8:30am – 10:30am.</b></li> </ul>	



File No: A1375/201301

## ACTIONS LIST – 24 September 2014

### Ministerial Advisory Panel

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#### Active Actions

ACTION ITEM		DUE DATE	STATUS
1.	<b>Meeting 26 March 2014</b>		
	DMP to invite an officer from WorkSafe to join MAP when the discussions on the regulations commence.	TBA	WorkSafe to be invited when discussions on regulations commence.
2.	<b>Meeting 23 July 2014</b>		
	DMP to consider Working Groups' recommendations and provide advice to the Minister.	24 Sep 2014	MAP to discuss Management and Supervision Workshop feedback, then MAP Chairperson will prepare advice to Minister.
3.	<b>Meeting 24 September 2014</b>		
	DMP to distribute timeline for consultation on the RIS to MAP members.	31 Oct 2014	
	Andrew Woodhams to provide a copy of the APPEA safe supervisor competency program.	15 Oct 2014	
	MAP to send a letter to Stuart Smith congratulating him on his appointment as CEO to NOPSEMA and set up a meeting to brief him on the reform.	10 Dec 2014	
	Ask the RIS consultant to make a presentation at the December MAP meeting.	10 Dec 2014	

#### Completed Actions

ACTION ITEM		DUE DATE	STATUS
1.	<b>Meeting 22 January 2014</b>		
	Panel members to confirm their proxies before 28 January 2014.	28 January 2014	<b>Completed</b> Proxies approved by the Minister
	Include in terms of reference out of session tacit approval of minutes	1 February 2014	<b>Completed</b> Terms of reference amended and approved by Minister

ACTION ITEM		DUE DATE	STATUS
	The Panel would like clarity what the WA government is not willing to compromise on in the WHS legislation.	26 March 2014	<b>Completed</b> Confirmation of the issues the government is not willing to consider changing in the WHS legislation: Previously, the government had views on four specific areas - penalty levels, union right of entry, health and safety representatives' capacity to direct the cessation of work, and reverse onus of proof in discrimination matters. The Department understands that the level of penalties is subject to some discussion, but the position on the other items remains unchanged.
	Mr Tooma's presentation to be distributed to Panel members with the minutes.	28 January 2014	<b>Completed</b> Emailed to members on 28 January 2014
	Project team to provide a diagram of the restructure proposed within RSD.	26 March 2014	<b>Completed</b> Distributed with the agenda for meeting 26 March 2014
	If Safework Australia put out a table of amendments for the mining WHS legislation, the Panel would like a copy.	26 March 2014	<b>Completed</b> Safework Australia does not have a table for the mining amendments. DMP will continue to monitor.
	Panel members to provide feedback on the Petroleum Discussion Paper by 12 February 2014.	12 February 2014	<b>Completed</b> Comments received. Summary provided with MAP agenda papers for 26 March meeting.
	MAP members would like to be kept informed of the RSD internal restructure.	ongoing 23 July 2014	<b>Completed</b> DMP provided updates on the progress of the RSD restructure at all MAP meetings up to 23 July 2014.
<b>2.</b>	<b>Meeting 26 March 2014</b>		
	Department to provide details (the 5% changes) of changes between the national model and the WHS Resources Bill.	29 Aug 2014	<b>Completed</b> Comparison table emailed to MAP 25 August 2014, comments due 15 September 2014, for discussion at MAP meeting 24 September 2014.
	Project team to send an invitation and details of the Professor Sparrow presentations to members. Members to respond with their preference to attend one of or all of the sessions.	26 March 2014	<b>Completed</b> Email to members sent 26 March 2014
	MIAC minutes to be attached to the meeting papers.	2 April 2014	<b>Completed</b> Link to MIAC minutes sent 26 March 2014
	Project team to send the link to the model regulations and members to come back to DMP by the end of April with any concerns.	30 April 2014	<b>Completed:</b> Email containing links to the Safework Australia website sent to members 2 April 2014
	Project team to coordinate members for the working groups, and terms of reference for the groups.	30 April 2014	<b>Completed:</b> ToR drafted, nominations received, meetings scheduled.
	Department to meet with Nick Zovko to discuss the GHS.	30 April 2014	<b>Completed</b>

ACTION ITEM		DUE DATE	STATUS
	DMP to meet with APPEA to discuss the petroleum legislation.	30 April 2014	<b>Completed</b> Meeting held 9 June 2014: Agreed that a Regulatory Impact Statement will be used to consult stakeholders on options for consolidating safety legislation
	Miranda Jane Taylor to provide a copy of pilot training course on MHFs critical risks from Victoria.	28 May 2014 23 July 2014	<b>Completed</b> Available for any members who would like a copy.
	Greg Stagbouer to provide a copy of the Defence training model.	28 May 2014 23 July 2014	The RAAF Training Program is not available as it is a restricted document.
<b>3.</b>	<b>Meeting 28 May 2014</b>		
	A working group on management and supervision will be formed after the current groups complete their tasks.	24 Sept 2014	<b>Completed</b> Management and Supervision Workshop held 15 September 2014. Feedback to be discussed at MAP meeting 24 September 2014.
	The dangerous goods presentation to be sent to members with the minutes.	4 June 2014	<b>Completed</b>
	Ian Fletcher to meet with the CEO of the CME and possibly the CME safety committee to discuss their view on the legislation.	23 July 2014	<b>Completed</b> - Meeting held 9 July 2014. Letter from CME distributed to MAP members with agenda papers.
<b>4.</b>	<b>Meeting 23 July 2014</b>		
	Richard Kern to provide some working examples of PHMPs and PCPs.	5 Sep 2014	Attempted to obtain some working examples, but none are available at this time.
	Michael Tooma to prepare paper on how the PHMP and PCP interact.	5 Sep 2014	<b>Completed</b> Paper received 5 September 2014 for discussion at MAP on 24 September 2014.
	DMP to review statistics relating to incidents involved with guarding under the current regulatory arrangements, including other Australian jurisdictions that require the use of a tool to remove guarding	24 Sep 2014	<b>Completed</b> To be discussed at MAP meeting 24 Sep 2014.
	If Minister issues a Media Release about the Resources Safety Bill, DMP to distribute to MAP.	TBA	<b>Completed</b> - Media release sent to members 13 August 2014.
	DMP to schedule meetings for December 2014 through to mid-2016 and amend MAP Terms of Reference to reflect this.	8 Aug 2014	<b>Completed</b> - 2015 meeting dates set. 2016 will be diarised towards the end of 2015. Terms of reference updated and uploaded to the DMP website.
	MAP members to provide submissions on the preferred legislation numbering and sequencing approach by 6 August 2014.	6 Aug 2014	<b>Completed</b> MAP preferred numbering based on the Model WHS Act – email sent to confirm 7/8/2014
	DMP to confirm whether WA will be adopting the model legislation requirements on fitness for work.	24 Sep 2014	Fitness for work requirements will be provided when drafting instructions for the regulations are prepared.

ACTION ITEM		DUE DATE	STATUS
	Drafting instructions relating to health monitoring and consultation to be provided to MAP.	24 Sep 2014	<p>Health monitoring requirements will be provided when drafting instructions for the regulations are prepared.</p> <p>Consultation requirements will be the same as Part 5 in the model WHS Act.</p>