

STATUTORY REVIEW OF WORK HEALTH AND SAFETY (MINES AND PETROLEUM SITES) LAWS

Mr Kym Bills, Independent Reviewer

Public consultation March – May 2020



Introduction

- Welcome
- Acknowledgement of country
- Outline of session
 - Briefing on issues & discussion paper
 - Open discussion
 - summary



Purpose of this forum

- outline the scope and process of the review, initial thoughts on any key issues and encourage submissions
- themes identified will be carefully considered in the statutory review



Why are the WHS (MPS) laws being reviewed?

- Five years since NSW implemented National Mine Safety Framework outcomes.
- Act must be reviewed and the Regulation is due for automatic repeal – so a statutory review process covers both
- current WHS (MPS) laws implemented new framework for single set of mine safety legislation for all mines and petroleum sites.
- WHS (MPS) laws only apply to mines and petroleum sites and part of *Work Health and Safety Act 2011*.

Statutory review process

- Have your say

- Discussion paper
- Formal submission
- Online survey
- forums



- Closing date extended to 1 May 2020
- Consideration and clarification of submissions
- Report to Parliament after final report to Minister by late October

Kym Bills – Independent reviewer

- Kym Bills will lead the review and produce a report to the Minister based on consultation and submissions
- Mr Bills has significant experience in high-hazard industries
 - Foundation Executive Director of the Australian Transport Safety Bureau for 10 years
 - Project manager for the National Mine Safety Framework
 - Lead investigator of \$3b Varanus Island gas pipeline explosions; NOPSEMA Board member >6 years
 - Employed by CSIRO to run an oil and gas research joint venture & National Resource Sciences Precinct
- Current Chair of the College of Fellows for the Australian Institute of Health & Safety
- Fellow of the Australian Institute of Company Directors and of the Australian Institute of Energy.

Terms of reference for the statutory review

1. Examine and report on the operation of the WHS (MPS) laws by considering whether the objectives of the *WHS (MPS) Act* are valid and whether the terms of the Act remain appropriate for securing those objectives and consider whether:
 - a. the WHS (MPS) laws assist in securing the objectives of the *Work Health and Safety Act 2011* for the protection from harm of workers and other persons on mine and petroleum sites from health and safety risks.
 - b. there are any areas of the WHS (MPS) laws that have had unintended outcomes
 - c. the WHS (MPS) laws remain consistent with the National Mine Safety Framework principles.

Terms of reference for the statutory review

2. Consider whether the following provisions are appropriate:

- a. the framework of duties to protect workers including safety management systems, principal hazard management plans, control and other plans and specific controls
- b. specific emergency management provisions
- c. worker representation provisions in coal mines
- d. the additional compliance and enforcement measures for a high-hazard industry
- e. licensing, authorisations and statutory functions provisions
- f. Mining and Petroleum Competence Board as an oversight mechanism
- g. Mine Safety Advisory Council in providing advice to the Minister
- h. Boards of Inquiry provisions
- i. notifications required to be provided to the regulator
- j. the framework has facilitated effective interstate regulatory cooperation.

Terms of reference for the statutory review

3. As required by the WHS (MPS) Act (section 77), undertake a review as soon as possible after the period of 5 years from the commencement of the Act to enable the Minister to report on the outcomes of the review tabled in each House of Parliament within 12 months after the period of 5 years.

Role of Independent Reviewer

- lead consultations with stakeholders and listen to any concerns or suggestions in relation to the terms of reference for making the WHS (MPS) laws better
- reviewing inputs from face-to-face forums, formal submissions and the results of the on-line survey
- assisted by the Resources Regulator and take its advice
- final report to the Minister will be by the Independent Reviewer and reflect his judgment based on review of all evidence

Discussion paper

25 questions structured around three sections:

1. National context
2. WHS (MPS) Act
3. WHS (MPS) Regulation



Questions from discussion paper

Section 1 – National Context

- The national WHS laws harmonisation process for mines progressed under the National Mine Safety Framework (NMSF)—an initiative of the Standing Council on Energy and Resources.
- The NMSF comprised seven strategies focused on key areas where consistency across jurisdictions would be most beneficial to industry.

Question 1

Do the WHS (MPS) laws remain consistent with the National Mine Safety Framework principles? (URL: www.industry.gov.au/data-and-publications/national-mine-safety-framework-implementation-report)

Questions from discussion paper

Section 1 – National Context

- The primary focus of the NMSF Steering Group was the development of nationally consistent mine safety legislation, including its integration with national model WHS laws to ensure a consistent and collaborative approach to WHS reform.

Question 2

Is the objective of seeking national consistency relating to WHS in relation to mines and petroleum sites still valid?

Questions from discussion paper

Section 1 – National Context

- The NMSF Steering Group had tripartite representation from regulators, business groups and employee groups.
- The group guided the development and drafting of the model WHS (MPS) Regulation to be made as chapter 10 under the model WHS Regulation. A number of supporting mining codes of practice to the model have also been developed through these processes.

Question 3

Has the WHS (MPS) framework facilitated effective interstate regulatory cooperation?

Questions from discussion paper

Section 1 – National Context

- The Standing Council on Energy and Resources agreed that additional tri-state provisions were required to address high-risk mining activities, such as underground coal mining.
- In parallel to the development of the model WHS (MPS) Regulation, NSW, QLD and WA formed a tri-state Legislative Working Group and met in a tripartite capacity to create a set of drafting instructions as the basis for the additional tri-state legislation.

Question 4

Are there any developments in mine and petroleum safety laws in the major mining states that could improve safety regulation and outcomes in NSW?

Questions from discussion paper

Section 2 – WHS (MPS) Act

- The WHS (MPS) Act assists in securing the objects of the WHS Act at mines and petroleum sites, including the object of securing and promoting the health and safety of persons at work. It establishes other mine and petroleum site specific requirements.
- The Secretary of the Department of Planning, Industry and Environment is the regulator of the WHS Act and WHS (MPS) Act in relation to mines and petroleum sites.

Question 5

Are the objects of the WHS (MPS) Act still valid, appropriate and working as intended?
(Part 1 of Act)

Questions from discussion paper

Section 2 – WHS (MPS) Act

- The WHS (MPS) Act establishes a primary duty holder through the definition of mine or petroleum site holder behind the operator, unless an entity is appointed under the regulation to be the operator.
- The WHS Act 2011 includes the primary duties of PCBUs and covers all workplaces and all hazards. The WHS (MPS) Act 2013 prescribes additional duties on an operator as the main coordinating PCBU in relation to a mine or petroleum site. The mine operator or petroleum site operator is the primary duty holder.

Question 6

Are there any areas arising from application of the WHS (MPS) laws that have had unintended outcomes? (Part 1 of Act)

Questions from discussion paper

Section 2 – WHS (MPS) Act

- All workplace deaths, serious injuries, illnesses and dangerous incidents that happen as a result of work activities at a mine or petroleum site need to be notified to the Regulator.
- The operator of the mine or petroleum site must ensure notification is made immediately after becoming aware of the incident.

Question 7

Are the provisions under the WHS (MPS) laws for **incident notification** still valid, appropriate and working as intended? (Part 3 of the Act)

Questions from discussion paper

Section 2 – WHS (MPS) Act

- A person who is appointed a government official under the WHS (MPS) Act is deemed to be an inspector for the purposes of the WHS Act.
- Government officials are categorised as inspectors, mine safety officers and investigators to reflect particular skills, knowledge and experience required to exercise compliance and enforcement functions at mines and petroleum sites.

Question 8

Are the provisions **functions of government officials** still valid, appropriate and working as intended? (Part 4 of the Act)

Questions from discussion paper

Section 2 – WHS (MPS) Act

- Under the WHS (MPS) Act, safety and health representatives (SHRs) are representatives of workers' health and safety interests in the coal industry. SHR arrangements only apply to coal mines, but do not apply where the only mining operation is exploring for coal.
- There are two types of SHRs – mine SHRs (elected by workers for a particular coal mine) and industry SHRs (appointed by the Minister in respect of all coal mines in NSW).

Question 9

Are the provisions for **worker representation in coal mines** still valid, appropriate and working as intended? (Part 5 of the Act)

Questions from discussion paper

Section 2 – WHS (MPS) Act

- Additional circumstances are provided for a government official issuing an improvement notice under section 191 of the WHS Act or issuing prohibition notices under section 195 of the WHS Act.
- There is also a provision for the Regulator to issue a stop work order requiring a PCBU to stop any activity to prevent a serious risk to health and safety.

Question 10

Are the provisions for **enforcement measures** still valid, appropriate and working as intended? (Part 6 of the Act)

Questions from discussion paper

Section 2 – WHS (MPS) Act

- The establishment of a Board of Inquiry allows for an assessment of industry performance and compliance via formal inquiries. They provide a middle tier of government response following as an alternative to a Judicial Inquiry or a Royal Commission.
- No Board of Inquiry has been established in relation to mines or petroleum sites since the WHS (MPS) laws came into effect in 2015.

Question 11

Are the provisions for a **Board of Inquiry** still valid, appropriate and working as intended? (Part 7 of the Act)

Questions from discussion paper

Section 2 – WHS (MPS) Act

- There are two statutory bodies established by the WHS (MPS) laws:
 - The Mine Safety Advisory Council (MSAC) provides strategic advice to the Minister on ways to improve health and safety in the mining industry.
 - The Mining and Petroleum Competence Board (MPCB) determines competence standards for safety-critical roles and undertakes the assessment of people to perform those roles.

Question 12

Are the provisions for **statutory bodies** still valid, appropriate and working as intended?
(Part 8 of the Act)

Questions from discussion paper

Section 2 – WHS (MPS) Act

- MSAC is comprised of representatives from the NSW Minerals Council, Cement Concrete & Aggregates Australia, CFMMEU, Australian Workers Union, one or more independent and a department representative.
- MPCB is comprised of representatives from the peak mine operator and mine worker organisations prescribed in the WHS (MPS) Regulation, as well as people with expertise in the development of competence standards and assessment of competence.

Question 13

Do the provisions for **statutory bodies** ensure adequate representation in the provision of advice in relation to health and safety and competence? (**Part 8 of the Act**)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

- An operator under the WHS (MPS) Act is the mine holder or the petroleum site holder unless they have appointed another person as the operator.
- The operator must notify the Regulator of any change to the operator's contact details and the commencement of mining or petroleum operations.

Question 14

Are the provisions for **nomination and appointment of operators** still valid, appropriate and working as intended? (**Part 1A of the Regulation**)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

- Under the WHS Act, a PCBU has a primary duty of care to ensure the health and safety of workers, so far as reasonably practicable, by managing risk.
- This requires that risks to health and safety be eliminated, and where this is not reasonably practicable, that they be minimised so far as is reasonably practicable.
- The WHS (MPS) Regulation also specifies some additional circumstances that trigger a requirement to review control measures.

Question 15

Are the provisions for **managing risk** in addition to the WHS Regulation still valid, appropriate and working as intended? (**Part 2, Div 1, Subdivision 1 of the Regulation**)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

- The WHS (MPS) Regulation establishes requirements for a safety management system (SMS) for mines and petroleum sites. SMS provisions place a general requirement on operators to document and follow their plans for implementing measures to control risks.
- A principal hazard management plan (PHMP) is required for each principal hazard. The WHS (MPS) Regulation includes requirements for principal control plans (PCPs).

Question 16

Are the provisions for **SMS, including PHMP & PCP**, still valid, appropriate and working as intended? (**Part 2, Div 1, Subdiv 2-4 and Div 2 and 3 of the Regulation**)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

- The WHS (MPS) Regulation requires certain risks to be managed by using specific control measures.
- There are duties on operators to use specific control measures in relation to aspects of operational controls, air quality and air monitoring, as well as fitness for work.
- The WHS (MPS) Regulation sets out a process for consultation between operators and other PCBUs carrying out operations at mines and petroleum sites that are defined as contractors.
- The WHS (MPS) Regulation sets out a process for consultation between operators and other PCBUs carrying out operations at mines and petroleum sites that are defined as contractors.

Question 17

Are the provisions for **specific control measures** still valid, appropriate and working as intended? (Part 2, Div 4-5 of the Regulation)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

- The WHS (MPS) Regulation imposes duties on all mine and petroleum site operators in relation to emergency management.
- Operators are required to prepare emergency plans. This requirement builds on the duty in the WHS Regulation to prepare an emergency plan. Operators are to address all aspects of emergency response in control plans.

Question 18

Are the provisions for **emergency management** still valid, appropriate and working as intended? (**Part 2, Div 6 of the Regulation**)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

- The WHS (MPS) Regulation imposes duties on operators in relation to the provision of information, training and instruction to workers.
- There are specific requirements, both before and after a worker commences work at the mine, including duties to give informational training and instruction to workers.

Question 19

Are the provisions for **information, instruction and training** still valid, appropriate and working as intended? (**Part 2, Div 7 of the Regulation**)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

- The Regulator may direct a PCBU at a mine or petroleum site to provide health monitoring to workers if:
 - there is a significant risk of an adverse effect on the health of a worker because of the worker's exposure to a hazard associated with mining or petroleum operations, and
 - valid techniques are available to detect that effect on the worker's health.

Question 20

Are the provisions for **health monitoring** still valid, appropriate and working as intended? (Part 3 of the Regulation)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

- Operators have a duty to consult with workers in relation to SMSs, risk assessments for PHMPs and PCPs, emergency response control plans, the implementation of the safety role for workers and fitness for work. This duty is in addition to the duty under WHS laws.
- Operators have a duty to implement a safety role for workers.

Question 21

Are the provisions for **consultation and a worker safety role** still valid, appropriate and working as intended? (Part 4 of the Regulation)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

- The WHS (MPS) Regulation imposes a duty on mine operators of all coal mines, underground mines or a mine where a risk assessment has been conducted (and it is determined a plan is required) to prepare mine survey plans.
- Survey plans must be prepared and certified by competent people, who will be registered mining surveyors.

Question 22

Are the provisions for **survey plans and mine plans** still valid, appropriate and working as intended? (**Part 5 of the Regulation**)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

- In addition to the duty to notify the Regulator of notifiable incidents, there are additional duties on mine operators in relation to the provision of information to the Regulator about:
 - safety critical activities covered by the high risk activity (HRA) notifications
 - incidents notified to the Regulator including dangerous incidents and high potential incidents
 - other matters to be reported
 - work health and safety reports
 - ancillary reports.

Question 23

Are the provisions for **notifications and information to be provided to the Regulator and information to be kept by the operator** still valid, appropriate and working as intended (**Part 6 and Part 7 of the Regulation**)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

- The operator of a mine or petroleum site must ensure that a statutory function is exercised by a person who meets the requirements for nomination. Competence to exercise statutory functions may be through holding a practising certificate or meeting other criteria or qualifications specified in the Regulation.
- Only one person can exercise a key statutory function and mining activity cannot take place if a qualified person is not nominated for more than seven days.

Question 24

Are provisions for **statutory functions** still valid, appropriate and working as intended?
(Part 8 of the Regulation)

Questions from discussion paper

Section 3 – WHS (MPS) Regulation

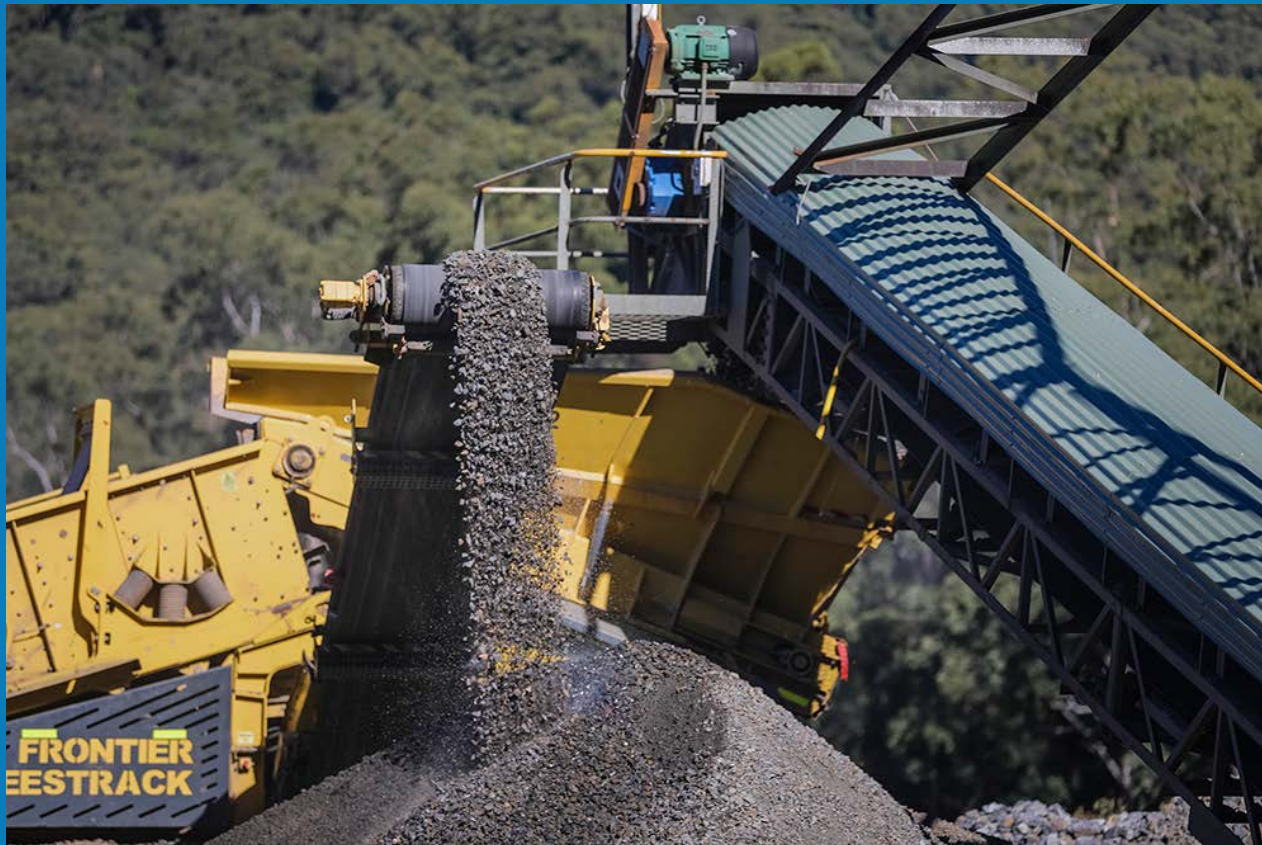
- The WHS (MPS) Regulation sets out a scheme for the licensing of PCBUs to conduct certain activities at coal mines e.g. the sampling and analysis of airborne dust.
- The WHS (MPS) Regulation has requirements for the registration of certain plant designs and items of plant for use in mines e.g. diesel engine systems. Unless otherwise specified, this only applies to their use in underground coal mines.

Question 25

Are provisions for **licensed activities and registration of plant** still valid, appropriate and working as intended? (**Part 9** and **cl 177** of the Regulation)

Questions

Response to common questions from the chat



Open discussion of issues

- Report back of key points from group discussions
- Facilitated discussion to address key themes identified in participant session



Summary of today and next steps

Summary of today

- Major themes of support/change

Next steps

- Summary of themes from all public forums will be collated for Independent Reviewer to consider

- Have your say

- Closing date extended to 1 May 2020
- Download the discussion paper
- Formal submission
- Online survey
- Visit Regulator's 'have your say' web page

www.resourcesregulator.nsw.gov.au/about-us/have-your-say



Close

- Thank you for your attendance and participation.



Practising Certificate Maintenance of Competence

- 3 Hours
- Informal Learning
- Legislation