Introduction

The fifth annual Registered Managers Forum was held 23 August 2019. This is a key event for the Department of Mines, Industry Regulation and Safety (DMIRS) to network with resources industry management, channel information, and hear the point of view of decision-makers in industry.

More than 150 managers, including registered managers, quarry managers, underground managers and alternatives attended the forum.

The main theme of the forum was Where are we going – regulating the mining industry in the future.

Forum format

The forum opened with a welcome from facilitator, Andrew Chaplyn, State mining engineer.

Mines and Petroleum Minister, William (Bill) Johnston and Director General, David Smith provided an overview of safety, including the government and Department’s commitments. Following their speeches, there was a question and answer (Q&A) session facilitated by Regional Inspector Martin Ralph with panel members Minister Johnston, Mr Smith, Deputy Director General Ian Munns and Mr Chaplyn.

After the Q&A, Mr Chaplyn spoke about the Department’s Towards 2020 commitments and the Department’s achievements to date. Mr Chaplyn also spoke about fatalities and serious injuries in the mining industry, participants were then asked to contribute their thoughts to the question “how are we going to turn this around?”

Prior to lunch Inspector of Mines Nicole Tucker presented “tailings storage facilities, pit wall failures and sink holes”.

After lunch external guest speaker Dr Garry Claxton, Senior Lecturer from Curtin University, addressed the theme of the forum.

The forum concluded with an update on the Safety Regulation System (SRS) Business Intelligence from Graham James, Regional Inspector, an update on the Mines Safety Roadshow from Roy Zylstra, Inspector of Mines and closing remarks from Mr Chaplyn.
What do you hope to gain from attending the Registered Managers Forum?

- Insights from the regulator: 92
- Keynote presentation: 8
- EMRS engagement: 7
- Update on WRS legislation: 33
- Industry networking: 18

How are we going to turn this around?

What’s your take away message from today?
Event survey responses

The majority of attendees at the forum believed it was a good opportunity to network with DMIRS staff and industry. Overall, 30% attended a previous Registered Managers Forum and 98% would probably participate in 2020.

Conclusions

The forum continues to be an effective way to engage with industry. The event continues to provide a rare opportunity for managers to come together to network and discuss safety issues of common concern.
Appendix 1  Presentation slides

1. Setting the scene
   - Andrew Chaalan
   - State mining engineer

2. The Department of Mines, Industry Regulation and Safety (DMIRS): The primary safety regulator for the mining, petroleum and dangerous goods industries in Western Australia.
   - Its role is to promote safety and health through:
     - Education
     - Specialist advice
     - Enforcement

3. Towards 2020 – our commitments
   - Toward 2020
     - Our commitments:
       - Triage
       - Enforcement
       - Reporting

4. Modernised legislation
   - Updated legislation:
     - New harmonised, streamlined health and safety legislation covering mines, dangerous goods, petroleum, high-risk facilities and geothermal energy.

5. Safety Regulation System (SRS) enhancements
   - SRS enhancements:
     - Reporting, for industry – planned roll-out Q2 2019
     - Enhancing compliance across all community data will be sanitised
     - Only to be able to access to site when user has security

6. Emergency management
   - Enhanced emergency preparedness and systems for those working:
     - Away from readily accessible infrastructure and support services

7. Update on progress:
   - Support emergency response competition (ERC) events in to promote emergency response.
     - Sponsored both surface and underground ERC Kalgoorlie this year
     - DMRIS Inspector involved in judging scenarios at all events.
**Human and organisational factors**

Focus area: Industry understand human and organisational factors (HOF) principles and apply to safety and health management.

**Update on progress:**
- Online content due for completion Q4 2019.
- Training of inspectors undertaken.
- 3 day awareness program completed.
- Four inspectors completed specialist course.

**Health and hygiene**

Focus area: Increased focus on chronic exposure to agents that lead to adverse impacts on health.

**Update on progress:**
- Coordination and final research into Nano disperse particulate matter (NDPM) behaviour, health impacts and control measures required.
- NDPM - Project undertaken at Sunrise Dam mine in Q2 2017.
- Research protocol released 29 June 2017.
- Presentations completed 2017 - NDPM presentations available online.
- Presentations at ACIEM/WoMMS19 conference.

**Industry forum:**
- Health and Hygiene forum held 24 June 2019.
- Toolbox presentations available online.
- Monitoring of noise exposures.
- Preliminary evaluation of compliance with noise exposures and wearing of hearing protection completed.

**WA Mining Safety statistics – 2019/19 injury statistics by area**

**WA Mining safety statistics – Fatalities**

**WA Mining statistics – Serious injuries**

**WA Mining statistics – 2019/19 Amputations, fractures and crushing (AFC) injuries**

That’s 250 people seriously injured!
2019 Registered Managers Forum – REPORT

Investigations and resulting prosecutions

Safe work month
Focus area: A collective effort across the Safety Regulation Group to promote the importance of workplace safety and health. The theme for 2019 is Building healthy and safe workplaces.

Update on progress:
- Events hosted by Safety Regulation Group Directorates to be held across October includes:
  - Mental Health workshops
  - Yulara safety workshops and forums
  - Mines Safety Roadshow
  - Work Health and Safety Excellence Awards.

1000 SAFE MINE

Presentation overview

Tailings storage facilities, pit wall failures and sink holes

Nicole Tucker
Inspector of Mines – Geotechnical
Two Sources of OHS law

Common law or Judge made law.
Statutory law or Parliament made law.

- Mine Safety Inspection Act 1994 (NA)
- Work Health Safety Act (4 x States and both Territories). Victoria and Western Australia yet to adopt.

A Duty of Care

As employers are in control of the workplace and workplaces can have significant risks to health and safety, employers and their nominated officers, are required to organise their workplace and their work systems to ensure people at work are not put in harm’s way.

Often referred to as a General Duty.

There exists a Statutory and Common Law - Duty of Care.

Where Reasonably Practicable!

The “so far as is practicable” specification is a statutory codification of the “cautious of negligence” which evolved from common law negligence actions.

Section 9 of the Mine Safety Inspection Act 1994 WA requires:

- An employer must, so far as is practicable, provide and maintain at a mine a working environment in which that employer’s employees are not exposed to hazards.

So What Does it All Mean?

“so far as practicable” is not just about what a reasonable person would have:

1. identified the hazard,
2. considered the risk, and
3. where necessary put a control or controls in place.

Risk is measured by considering:

- The magnitude of the risk, the probability of its occurrence and the means of removing or mitigating the potential injury or harm to health.

Weighted against the expense, difficulty and inconvenience.

Risk Perception

A trend towards bias.

Anyone remember Captain T J Smith?

Captain T J Smith provided a powerful dissection to a meeting of investors on the risks of travel by ocean/sea.

The Risk Assessment

The severity or magnitude of the risk.

In the beginning: "On the Shoulder of Giants (1911) AC 367.

Putting it Simply

The duty holder must have identified all the hazards associated with an undertaking.

The duty holder must have risk assessed all of these identified hazards.

Subject to level of risk, the duty holder must put an effective control in place to keep the risk of a hazard causing an adverse event AURP.

Passage of time is no defence

Perth Magistrate Martin Pynn recently pointed out that performing the same task for 10 years without prior incident didn’t reduce the seriousness of an offence.

An exact mining worker was crushed to death in December 2014 when a 6m metre long polyethylene pipe slipped while being moved.

Exact mining was given a penalty of $130,000.

The worker was given a funeral and the workers’ family were given life sentences.

Australian Institute of Company Directors

According to Christian Nielson, the Australian Institute of Company Directors' Directors (and company Officers) need to understand what “due diligence” is because it will be applied a lot more literally and to every level of the company, not just the big guys, which is where the regulators have been hunting. 

"Due diligence" is the extent to which a prudent person would act, considering all the circumstances, to protect himself or herself against a possible loss caused by the other party. The duty of care will be determined by the nature of the relationship between the parties and the extent of their knowledge, skill and access to relevant information during the transaction. 

The concept of “due diligence” is a fundamental principle of international law, and it serves as a basis for determining responsibility and liability in international and commercial transactions. It is a standard of care that is expected of a prudent person in similar circumstances. 

The person who breaches due diligence is required to compensate the other party for any loss or damage caused by their failure to meet the standard of care. 

The Australian Institute of Company Directors (AICD) is the peak body for company directors in Australia. It promotes director excellence and provides resources, education, and networking opportunities to support directors in their role. 

The AICD advocates for directors to fulfill their legal and ethical obligations and to uphold the highest standards of corporate governance. 

References:

Meeting the Due Diligence Requirements through Processes.

In demonstrating due diligence, section 27 of the WHS Act requires officers to show that they have “taken reasonable steps” to acquire and update their knowledge of health and safety matters.

My research suggests that there are “specific elements” to achieving this end...

Knowledge of and commitment to work health safety matters

The key role of a leader is to provide safety direction and oversight of the operation of the business.

To be a safety leader you need to be a volunteer. It is not a job; it’s a calling.

In a positive safety culture nothing takes precedence over safe work. You will need to know what questions to ask and when to ask them.

Never forget, ignorance of the law is not a defence.

A leader must systematically inform themselves of relevant developments and trends.

I would recommend that you acquaint yourself with the fundamentals of risk management, incident investigation, auditing and horizon-gazing, to name a few.

Resources and Processes

Due diligence requires the safety impact of every resource decision to be assessed.

Resources include human resources and not just financial resources.

Safety expenditure may be better characterized as a capital investment.

Safety in design is implied in the duty to ensure adequate resources and processes are provided.

Monitoring Performance

Analyze and learn from incidents, hazards and risks.

Rely on a “just” safety culture.

A blame culture does not support the desired outcome that is the continual improvement of OHS.

Analyze and learn from incidents and near miss data to avoid future incidents.

There is a role for a properly constructed incentive scheme as part of the mix of tools to drive better safety performance.

Legal Compliance

Leaders must ensure that they implement a process for legal compliance audits.

This is where the standard against which the system is measured is the law itself.

Are these Liabilities Insurable?

While directors and managers will often have directors and officers (D&O) liability insurance, these insurances are problematic in relation to work health and safety offenses.

As a result of Alltini & Ferno Con (4) Pty Ltd v SAFI [2013] SASC 21, judges seeking to mete out meaningful penalties are more likely to consider custodial sentences where D&O policies are in place.

The recent Senate inquiry into industrial deaths called for urgent reform of the NIDS laws to make it unlawful to injure against a fine or defence costs when related to personal liability for NIDS breaches.

Proactivity and Due Diligence

The six components of the due diligence duty.

1. Knowledge of work health safety matters.
2. Understanding of the nature of the operations of the business and the hazards and risks associated with those operations.
3. Resources and processes.
4. Information regarding incidents, hazards and risks and responding in a timely way to that information.
5. Legal compliance.
6. Verification.

Understanding the nature of operations

A leader is not only required to acquire and maintain a base knowledge but also contextualize that knowledge in relation to the business or undertaking.

- Put a required safety action in a context that enables all workers to completely understand what is required of them to stay safe.

Identify the hazards, assess the risks and put the necessary controls in place.

Verify

The final element requires “verification” of the implementation of the due diligence framework.

Verification can be typically achieved through system performance audits and should be treated as opportunities for learning, refocusing the organisation back to its roots in a cycle of continuous improvement.

A more holistic journey towards verification is using the combination of safety observations, peer reviews and safety surveys which becomes all the more effective when incorporated with safety audits.

Audits must be conducted by competent persons without fear or favour.

Audits are required at reasonable intervals.

Thirteen Block
Safety Regulation System (SRS) Business Intelligence update

Graham James
Regional Inspector

New SRS functionality – Agreements

- Agreement to operate without a quarry manager
  - Under certain conditions the principal employer can apply for approval to operate a quarry without a quarry manager.
- Agreement to operate without an underground manager
  - A small syndicate can apply for an agreement to operate an underground operation without appointing an underground manager.
- From October 2019 applications will be via SRS.

Intent

- To help you see information related to your mine(s) and trends over time
  - It’s the same information that inspectors see
  - Can be across an organisation (if you have access)
- To see comparative safety information
  - Initially with operations mining the same commodity
  - Other comparisons planned (e.g., type of operation)
- Help you stay on top of things
  - Complete actions in a timely manner

Navigation and selection

- Report period
  - 12 or 24 months
- Principal Employer
  - Based on SRS security access
- Combined operations (mines)
  - Can access one or multiple mines (based on SRS security access)
- Site operations (areas of a mine)
  - Can access one or multiple areas
  - e.g., Openpit, Underground Processing Plant

“Real time” information

- Information is updated daily (overnight)
  - Whatever was issued/completed yesterday is visible today
- For 3 reports, industry submit information at the end of the month, so the information is 1 to 2 months old. (Clarified in Report Help)
  - Missing monthly status report
  - Workforce summary
  - Comparative information

Sample chart: Workforce summary

- Workforce and Safety and health representatives

Sample detail report: Open defects
Comparative performance: Duration rate

Comparative performance: Frequency rate

That’s just a sample

Early feedback from industry users:

Some industry users reviewed this functionality in July.

Their feedback was extremely positive

“This is really good stuff”

“It is so user friendly”

“This will save us hours of work”

“Really like it”

“It’s easy to use, simple and gives us access to real time data”

When is this available?

From today (23 August 2016) access has been granted to:

- Registered Managers
- Alternative Registered Managers
- Company Administrators (for Compliance)

- There is a short video (3.5 min) on Business Intelligence Reports
- Access videos via SRS ‘Help’

Moving forward

- We understand it may take some sites / organisations a little while to get on top of things
- Inspectors will be able to assist you and will discuss your reports with you when they visit
- Additional reports and functionality will be added over time

Update on the Mines Safety Roadshow

Roy Zydras
Inspector of Mines – Electrical Engineer

2019 Mines Safety Roadshow

Program

Safety awareness video

Mines Safety Roadshow showcases a new addition to the “safety awareness” video series:

Retrospective look at how we assess a job and why we make the decisions we make
Safety and health representatives, safety committee members, supervisors and others responsible for safety and health are encouraged to attend.

This is a free event, however bookings are essential.

Register online at www.mine.sa.gov.au/events

Safe Work Month
Focus area: A collective effort across the Safe Work Regulation Group to promote the importance of workplace safety and health. The theme for 2019 is Building healthy and safe workplaces.

Update on progress:
- Events hosted by Safe Work Regulation Group Directors to be held across October includes:
  - Mental Health Week
  - Young Workers Workshops and Forums
  - Mines Safety Roadshow
  - Work Health and Safety Excellence Awards.

Work Health and Safety Excellence Awards
Focus area: The inaugural Work Health and Safety Excellence Awards recognise outstanding solutions and innovations to specific workplace health and safety problems in the mining industry. The awards are open to the whole mining industry.

Update on progress:
WHS Excellence Awards — officially launched by Minister 4 April 2019
- Nominations closed 7 June
- Judging underway
- Ceremony to be held 1 October
- Subscribe to our news alerts for tickets.

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LinkedIn: Department of Mines, Industry Regulation and Safety

Sign up to receive weekly news alerts at www.dmirs.wa.gov.au
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