

WorkCover NSW

AND

**Department of Trade and Investment, Regional Infrastructure and
Services**

**MEMORANDUM OF UNDERSTANDING FOR
THE MUTUAL REFERRAL AND
INVESTIGATION OF WORK HEALTH AND
SAFETY MATTERS BY A WORK HEALTH AND
SAFETY REGULATOR**

WorkCover NSW
AND
Department of Trade and Investment, Regional Infrastructure and Services

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1. PARTIES

The WorkCover Authority of NSW

AND

Department of Trade and Investment, Regional Infrastructure and Services

“the Parties”

2. RECITALS

- 2.1 WorkCover is a statutory body established under the *Workplace Injury Management and Workers Compensation Act 1998* with functions as outlined in section 22 of that Act. WorkCover is the regulator of work health and safety in all workplaces across NSW except mining workplaces.
- 2.2 The Department is the NSW government agency responsible for resources and energy in NSW. Pursuant to WHS legislation, the Secretary of the Department is the regulator of work health and safety in mining workplaces.
- 2.3 The Parties are committed to ensuring the health and safety of workers in their agencies.
- 2.4 The Parties recognise that there may be a conflict of interest, perceived or actual, if either regulator was to investigate certain WHS matters involving its own workplaces, which in the case of the Secretary of the Department, as the work health and safety regulator at mining workplaces, means mining workplaces where the Secretary of the Department is a Person Conducting a Business or Undertaking.
- 2.5 The Parties agree that where necessary to avoid an actual, potential or perceived conflict of interest it is desirable for the regulators to assist each other by undertaking transparent and accountable investigations of certain WHS matters involving the other party's workplaces.
- 2.6 The Parties recognise that each has the resources to give effect to this MOU and that, in the case of the Department, the applicable resources are those utilised by the Secretary as the WHS regulator (those resources engaged in regulatory activities under or in connection with the mine safety legislation and drawn from the Mine Safety Fund established under the *Mine Safety (Cost Recovery) Act 2005*).

3. DEFINITIONS

- 3.1 In this MOU:

WorkCover means the WorkCover Authority of NSW;

The Department means the Department of Trade and Investment, Regional Infrastructure and Services;

MOU means this Memorandum of Understanding;

Party means either the Department or WorkCover;

Parties mean the Department and WorkCover;

Regulator means either WorkCover or the Secretary of the Department;

WHS Act means the *Work Health and Safety Act 2011*

WHS legislation means: the WHS Act; *Work Health and Safety Regulation 2011*; and, when commenced, the *Work Health and Safety (Mines) Act 2013*; and *Work Health and Safety (Mines) Regulations 2014*;

WHS matters means the inspection and enforcement of compliance with WHS obligations of either regulator;

WHS obligations means obligations and duties of the regulator created by the WHS legislation.

4. TERM

- 4.1 This MOU commences on the day of execution and continues until terminated in writing.
- 4.2 Either Party may terminate this MOU by giving 30 days' notice in writing to the other Party.

5. PURPOSE

- 5.1 The purpose of this MOU is to establish a framework for the referral to the extent permitted by law of WHS matters by one regulator to the other regulator for investigation and enforcement with respect to compliance with WHS obligations.

6. LEGAL INTENT

- 6.1 This MOU is a voluntary statement of intent by the Parties at the time of execution and for the duration of the agreement.
- 6.2 This MOU does not limit either Party from fully exercising its statutory powers.

7. PROTOCOLS

- 7.1 Protocols will be developed by the regulators, and agreed between the Parties, for the purpose of identifying the circumstances in which WHS matters will be referred from one regulator to the other regulator.
- 7.2 The agreed protocols will ensure that neither Party is excessively burdened by the other's referrals.
- 7.3 The protocols may include the granting of any appropriate delegations, authorisations and appointments.

8. MAKING REFERRALS

- 8.1 To the extent permitted by law:

- a) WorkCover may, in accordance with its protocol, refer WHS matters to the Secretary of the Department; and
- b) The Department may, in accordance with its protocol, refer WHS matters to WorkCover.

9. ACCEPTING REFERRALS

To the extent permitted by law:

- 9.1 If a referral is made in accordance with 8.1 a) and is accepted, the Secretary of the Department may investigate, take any appropriate compliance action, or exercise any other appropriate regulatory functions or powers.
- 9.2 If a referral is made in accordance with 8.1 b) and accepted, WorkCover may investigate, take any appropriate compliance action, and exercise any other appropriate regulatory functions or powers.
- 9.3 If a referral is accepted by a regulator the referring regulator will cooperate (in accordance with obligations and rights specified in the WHS Act) with any subsequent investigation.
- 9.4 To the extent that a regulator may legally undertake an investigation in the workplace of another regulator, when investigating accepted referrals, each regulator retains full autonomy in the exercise of their statutory and administrative functions.
- 9.5 A regulator will make its decision as to any action to be taken (including whether or not to prosecute the other regulator for work health and safety breaches):
 - a) in the public interest;
 - b) consistent with the requirements of the Premier's Memorandum relating to litigation between Government authorities; and
 - c) consistent with the investigating regulator's relevant policies and procedures.

10. FUNDING AND COST RECOVERY

- 10.1 Each party will bear its own costs incurred in relation to the preparation, execution and implementation of this agreement.
- 10.2 Where a regulator accepts a referral in accordance with 8.1 funding arrangements will be determined based on:
 - a) a calculation of chargeable hours multiplied by an hourly cost, as outlined in an agreed fee schedule; plus
 - b) actual expenses incurred by the agency over and above its investigative costs.
- 10.3 A Party may revise its fee schedule annually

11. DISPUTE RESOLUTION

- 11.1 In the event of any dispute arising pursuant to this MOU, the Parties will attempt in good faith to reach a prompt negotiated resolution by designating officers of appropriate authority to resolve the dispute.

12. MODIFICATION

- 12.1 All amendments and variations to this MOU must be agreed to by both Parties, evidenced in writing and signed by the Parties.
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13. REVIEW

- 13.1 The Parties agree that this MOU will be monitored and reviewed following the first twelve months of it being signed and then every three years afterwards (or as otherwise agreed).

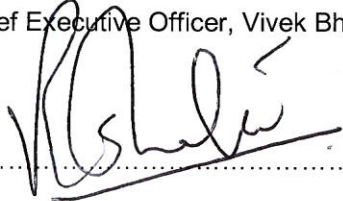
14. SIGNATORIES TO THIS MOU

This MOU is executed on the

..... day of 2014.....

Execution by WorkCover Authority of NSW

by the Chief Executive Officer, Vivek Bhatia



.....
(signature of Vivek Bhatia)

17th OCT 2014

.....
Date

in the presence of:

SAMANTHA LAWRENCE

.....
(insert name of witness)



.....
(signature of witness)

Execution by the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services

by Mark I Paterson AO



.....
(signature of Mark I Paterson)

23.10.14

.....
Date

in the presence of:

JESSICA BRAMBLE

.....
(insert name of witness)



.....
(signature of witness)

15. CONTACT DETAILS

WorkCover

General Manager Work Health and Safety Division WorkCover NSW	13 10 50 (general contact number)
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Department of Trade and Investment, Regional Services and Infrastructure

Deputy Secretary, Resources and Energy Department of Trade and Investment, Regional Infrastructure and Services	02 9338 6600 (general contact number)
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