



**Submission to SafeWork SA Policy and Strategy Group**

**Proposed Approved Code of Practice for Working Hours in South  
Australia**

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<b>Date:</b>	30 June 2009

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## **1. Summary**

- 1.1. The South Australian government proposes to introduce an Approved Code of Practice on Working Hours based on the Western Australian Code of Practice on Working Hours (2006). The introduction of such a code of practice is supported by the statement of the Acting Chief Executive in a letter dated 16 April 2009, regarding the effect of 'long and irregular work hours' on occupational health and safety and the lack of 'specific guidance or resources for employers and employees dealing with fatigue and the impact of work arrangements on health and safety'.
- 1.2. Work arrangements in the resources sector are highly flexible, supported by flexible awards such as the South Australian Mining Miscellaneous Award and federal modern Mining Industry Award that will commence in 2010. Operations ranging from Olympic Dam, to the Challenger Gold Mine and Mindarie in South Australia, for example, are remote based with 12 hour shifts worked over varying rosters such as 2 weeks on/2 weeks off, 4 days on/4 days off or 2 weeks on/1 week off. Existing rostering arrangements are also recognised by the federal government, which has expressed a commitment towards enabling those arrangements to continue under the new federal workplace relations system.
- 1.3. Flexible rostering arrangements are vital to the maintenance of the global and national competitiveness of the State, which is gaining recognition as a prospective mining location. The Premier himself has identified the industry as being a dominant one for the State in the future.
- 1.4. A code of practice on working hours has the potential to put at risk existing, flexible rostering arrangements within the resources sector, if

it takes an approach that is prescriptive and which sets maximum limits or standards that must be adhered to. It is therefore important that if a code on working hours is developed, that the government refrain from prescribing maximum hours of work, rest breaks or meal breaks, for example, that will prevent existing arrangements from continuing and will undermine the flexibilities included in the new federal workplace relations system and supported by the federal government.

1.5. If the South Australian government determines to introduce a code of practice on working hours, the Western Australian Working Hours Code (2006) is an appropriate model as it advisory only, providing high level guidance to employers and employees based on principles of risk management. The Western Australian code does not set limits on working hours or prescribe particular means by which hazards should be controlled.

1.6. The approach taken in the Western Australian code enables individual enterprises to implement policies and practices to address fatigue and other risks associated with hours of work that meet their individual needs and those of their employees. Risk management allows for the continued identification of emerging hazards and encourages innovative approaches to control those hazards. This is the best means of ensuring all persons are focussed on, and jointly responsible for, health and safety in the workplace.

1.7. If the government determines to develop and introduce a code of practice on working hours, AMMA submits that it must meet the following requirements:

1.7.1. It must not be prescriptive, setting maximum limits or standards that will prevent existing flexible working arrangements from continuing;

- 1.7.2. It must not detract or undermine arrangements permitted by existing industrial instruments;
  - 1.7.3. It must facilitate the continuation of any fatigue management plans or other informal measures already in place;
  - 1.7.4. it must identify the joint responsibility of employers and employees to ensure the health and safety of others and employee obligations to report fit for work; and
  - 1.7.5. it must be based on risk management principles that are applied holistically to the workplace in order to:
    - consider the overall risk of a number of hazard factors; and
    - enable a single control measure to address one or more identified hazard factors.
- 1.8. AMMA notes that at this stage, the government is 'proposing' to develop an Approved Code on Working Hours for South Australia. While intentions have been expressed to base this code on the Western Australian Code of Practice on Working Hours (2006), a code has not yet been drafted for South Australia.
- 1.9. If the government does develop a Code of Practice on Working Hours following this consultation process, AMMA calls on the government to release a draft code in order for industry to assess whether it meets the requirements put forward in this submission and to enable further review and comment.

## **2. AMMA Profile**

- 2.1. AMMA is the national employer association for the mining, hydrocarbons and associated processing and service industries, including significant numbers of construction and maintenance companies in the resources sector.
- 2.2. AMMA is the sole national employer association representing the employee relations, human resource management, occupational health and safety, education, employment and training interests of Australia's onshore and offshore resources sector and associated industries.

## **3. The Resources Sector in South Australia**

- 3.1. There are 11 mines currently operating in South Australia,<sup>1</sup> a large portion of which are based in remote locations. Paul Holloway, Minister for Mineral Resources Development expects that four or five will be approved in the next 12 months.<sup>2</sup> ABARE reports that there are 16 projects in South Australia undergoing pre-feasibility/feasibility studies.<sup>3</sup>
- 3.2. South Australia is currently ranked 10<sup>th</sup> in the Fraser Institute's list of the most prospective locations for mining potential.<sup>4</sup> South Australian mining's gross value add reached \$2.9 billion 2007-08.<sup>5</sup>

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<sup>1</sup> Paul Hayes, 'SA exploration slows', Australian Mining, 12 June 2009, [www.miningaustralia.com.au/Article/SA-exploration-slows/486263.aspx](http://www.miningaustralia.com.au/Article/SA-exploration-slows/486263.aspx)

<sup>2</sup> Ibid.

<sup>3</sup> ABARE, Major development projects – minerals and energy, April listing, 2009.

<sup>4</sup> Fraser Institute, Survey of Mining Companies 2008/09, February 2009, Fraser Institute, viewed 30 June 2009,

[http://www.fraseramerica.org/commerce.web/product\\_files/MiningSurvey20082009\\_US.pdf](http://www.fraseramerica.org/commerce.web/product_files/MiningSurvey20082009_US.pdf)

<sup>5</sup> Ibid.

3.3. The resources sector will be an important industry in South Australia in the coming years.

3.4. Work cycles made up of working days and non-working days are normal practice within the resources sector, as are 12 hour shifts and continuous shift rosters. For example, across Olympic Dam, Challenger Gold Mine and Mindarie, 12 hour shifts are worked over rosters that include 2 weeks on and 2 weeks off; 4 days on and 4 days off; 2 weeks on and 1 week off or 9 days on and 4 off.

3.5. Flexibility in working hours arrangements are enabled under the South Australian Mining Miscellaneous Award and the new federal modern Mining Industry Award 2010. These awards allow for averaging hours of work, 12 hour shifts, reasonable overtime, rest breaks and meal breaks. Flexible arrangements have been recognised and accommodated in the federal government's new workplace relations system, to which the Deputy Prime Minister has stated:

Fly-in-fly-out is vital for the mining industry. People work on historically accepted roster patterns; that's part of the mining industry. Workers work those patterns, they are use to working those patterns; many of them enjoy working those patterns and those patterns of work will be available to the mining industry under our workplace relations reforms.<sup>6</sup>

3.6. The Deputy Prime Minister has also requested the Australian Industrial Relations Commission, in respect to remote locations,

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<sup>6</sup> The Hon. Julia Gillard, '20,000 training places online, discussion paper', National Employment Standard, Transcript, Press Conference, 1 April 2008.

to include terms that permit the roster arrangements and working hours presently operating in practice in those locations to continue after the making of the modern award.<sup>7</sup>

- 3.7. The implementation of a code of practice on working hours should not prevent shift and working arrangements permitted by the awards and to which the federal government has expressed a commitment.
- 3.8. Within this context, the resources sector is committed to improving health and safety and many resources sector employers have committed to achieve a target of zero harm in their workplaces. Many resources sector employers have extensive fatigue management policies in place in order to address health and safety issues that may arise.

#### **4. Introduction**

- 4.1. By letter dated 16 April 2009, Acting Executive Director of SafeWork SA has advised that the South Australian government proposes to develop a code of practice that is based on the Western Australian Code of Practice on Working Hours (2006). AMMA notes that the Western Australian code is based on risk management principles and does not prescribe maximum standards or set limits on working hours, nor does it specify the precise control measure to implement to address an identified hazard. In summary, it provides guidance to employers and employees on the health and safety risks arising from hours of work and provides advice on what can be done, as opposed to telling employers what must be done.
- 4.2. If an approved code on working hours is developed and implemented in South Australia, the Western Australian working hours code of practice is an appropriate model. There are a number of requirements

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<sup>7</sup> Request under section 596C(1) – award modernisation, Consolidated version, 2 May 2009.



to this model that are absolutely essential in order for the working hours code to be supported by the resources sector. The essential requirements for an approved code on working hours are that it:

- is not prescriptive and does not set maximum limits or standards that will interfere with current hours of work arrangements nor the flexibility to change rostering arrangements;
- does not detract or undermine arrangements permitted by existing operation instruments;
- facilitates the continuation of any fatigue management plans or other informal measures already in place; and
- is based on risk management principles that allow for holistic application of the code by business and regulators. A code based on risk management principles must acknowledge that:
  - factors contributing to fatigue must be considered collectively to assess the overall risk; and
  - potential hazard factors must not require a single matching control measure – one may control a number of hazard factors.

4.3. The industry will become a significant contributor to the South Australian economy in future years and it is important that an approved working hours code does not impact on the ability of individual employers to determine their rostering arrangements to meet their specific circumstances. This will ensure that South Australia remains competitive and continues to attract strong investment in the resources sector.

4.4. AMMA draws particular attention to the following pertinent statements in the Western Australian code:

As individual workplaces and industries have different working hours arrangements, this code of practice provides high level general

guidance and **recommendations** on risk management. It is suggested that the risk management approach is tailored specific to the unique demands of each workplace/and or industry [emphasis added].<sup>8</sup>

The risk management process of identifying hazard factors, assessing the risks and implementing controls should be **holistic**. For example:

- Interaction between a combination of hazard factors and its effect on the level of risk should be assessed;
- In some instances, it may be acceptable to have a higher risk rating for a hazard factor or hazard factors provided the implemented control measure(s) address the overall risk; and
- A potential hazard factor may not necessarily require a single matching control measure. A response could be to implement a control measure that addresses a number of potential hazard factors [emphasis added].<sup>9</sup>

4.5. South Australia should not put at risk its competitiveness or investor attractiveness by being out of step with the generic approach that exists in Western Australia. These same principles of risk management and holistic application of the code should be adopted in the proposed Approved Code of Working Hours in South Australia.

## 5. Risk Based Code

5.1. The resources sector is a unique industry. There are different types of hazards compared to other industries and within sub-sectors of the industry itself and a high risk of injury, hence why the industry ‘undertakes quite strict fitness for work testing’.<sup>10</sup>

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<sup>8</sup> Commission for Occupational Safety and Health and Mining Industry Advisory Committee, *Code of Practice Working Hours 2006*, Worksafe Western Australia, 1.

<sup>9</sup> Ibid, 9.

<sup>10</sup> Bofinger, C, Mahon E, Cliff D, and Heilerk, Fitness for duty: the findings of ACARP scoping study, Mineral Industry Safety and Health Centre, University of Queensland, 2001, cited in Andrew See, Examining the legal implications of being fit for work, 11 August 2003, [http://www.andrewjsee.com.au/index.php?option=com\\_docman&/itemid=4](http://www.andrewjsee.com.au/index.php?option=com_docman&/itemid=4) viewed 12 June 2009.

- 5.2. A number of employers will already have initiatives in place to deal with fatigue that include the provision of transport to site, rest periods, training and information, health checks and rest facilities etc. This is all the more likely for employers that operate across state boundaries and are subject to particular fatigue management requirements in the respective state.
- 5.3. A risk based code will allow existing initiatives to be accommodated by employers in developing a risk management strategy and promotes continuous improvement as business responds to emerging hazards. A risk management approach will involve:
- Hazard identification;
  - Risk analysis;
  - Risk control; and
  - Risk monitoring.
- 5.4. This is the method taken in the Western Australian code, which provides guidance and non-binding recommendations on a broad range of hours of work issues. A useful guidance tool titled 'Risk Management Guidelines'<sup>11</sup> is provided in the Western Australian code that enable employers to look at the broad range of hazard factors listed and where the risk is considered high, employers can consider what types of controls can be put in place to reduce or eliminate that risk.
- 5.5. This approach accommodates the range of needs of different organisations that operate in different environments – an important consideration where a code of practice is intended to apply to different industries with different operational requirements.

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<sup>11</sup> Ibid, 10.

5.6. A code that takes a prescriptive approach that is restrictive in its application, such as by specifying maximum hours of work, length and timing of breaks and time off duty, may in fact result in more harm than good to the viability of the business and safety of workers where it does not meet their specific needs and circumstances.

5.7. **AMMA supports a risk based code that is purely advisory and which does not set hard and fast maxims.**

## 6. **Application of the Code**

As stated in the introduction above, the application of the code should be holistic, meaning that the assessment of risks and implementation of control measures should not be considered in isolation. The overall risk must be determined based on the collective hazard factors at the workplace and employers must be able to implement a single measure to control a number of hazard factors.

6.1. This 'holistic approach to risk management' is taken in the Western Australian code.<sup>12</sup>

6.2. **AMMA supports the holistic approach to risk management identified in paragraph 2.4 of the Western Australian code.**

## 7. **Responsibility for Health and Safety**

7.1. An approved code of practice on working hours should not overlook the role and responsibilities of employees in ensuring their own health and safety. This is recognised in the Western Australian Code, which

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<sup>12</sup> See Ibid, 9.

expressly highlights the ‘joint responsibilities for safety and health at the workplace’,<sup>13</sup> and states that:

[E]mployees have responsibilities to take reasonable care to ensure their own safety and health and that of others affected by their work.<sup>14</sup>  
They must...report any situations that may be hazardous.<sup>15</sup>

7.2. The Western Australian code also provides ‘information for employees’ in Appendix 3, which again highlights their responsibility for their own health and safety and that of others, but also provides tips for sleeping, eating and drinking in order to address fatigue related issues. This is an essential element of the code that acknowledges the risks that may arise from the lifestyle choices made by individual employees.

7.3. **AMMA supports a code of practice that highlights the obligations of employees under the code to attend fit for work.**

## 8. Conclusion

The South Australian resources sector will undergo significant growth in the near future, making it an important contributor to the South Australian economy and increase jobs for South Australians. The mining potential of the State is recognised by the Fraser Institute and Premier Mike Rann who has said that it will be the ‘dominant industry in South Australia for decades to come’.<sup>16</sup>

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<sup>13</sup> Ibid, 1.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid, 2.

<sup>16</sup> Primary Industries and Resources, ‘Premier officially opens Prominent Hill mine,’ *Media Release*, Government of South Australia, 24 May 2009, viewed 18 June 2009, [http://www.pir.sa.gov.au/minerals/press\\_and\\_events/news\\_releases/premier\\_officially\\_opens\\_prominent\\_hill\\_mine](http://www.pir.sa.gov.au/minerals/press_and_events/news_releases/premier_officially_opens_prominent_hill_mine)

It is important that a code of practice on working hours, as proposed by the South Australian government, does not result in over regulation of industry that might impact the ongoing viability of business and indeed, the safety of employees.

Industry and businesses within industry sectors often have quite different needs and operational requirements that to impose a 'one size fits all' code of practice will stifle flexible workplace arrangements and discourage innovative measures to address health and safety in the workplace and respond to emerging hazards.

A code based on principles of risk management, as is the approach taken in the Western Australian Code of Practice on Working Hours, which makes recommendations and provides high level general guidance will accommodate those different needs of business and allow emerging hazards to be more readily identified and addressed.

A risk management approach, that acknowledges the joint responsibility of employers and employees to health and safety and empowers employees to participate in hazard identification and assessment, will ensure safety is at the forefront.

If the government determines to implement a Code of Practice on Working Hours, AMMA supports a code based on the high level, general guidance approach of the Western Australian code. To that end, it will not support a code that is prescriptive or the setting of maxims, for example, on hours of work, taking breaks or roster cycles.

On that basis, it would be prudent for the government to release a draft code of practice on working hours in South Australia for further consultation and comment by industry.

## 9. Bibliography

ABARE, Major development projects – minerals and energy, April listing, 2009.

Andrew See, Examining the legal implications of being fit for work, 11 August 2003,  
[http://www.andrewjsee.com.au/index.php?option=com\\_docman&/itemid=4](http://www.andrewjsee.com.au/index.php?option=com_docman&/itemid=4)  
viewed 12 June 2009.

Commission for Occupational Safety and Health and Mining Industry Advisory Committee, *Code of Practice Working Hours 2006*, Worksafe Western Australia

Fraser Institute, Survey of Mining Companies 2008/09, February 2009, Fraser Institute, viewed 30 June 2009,  
[http://www.fraseramerica.org/commerce.web/product\\_files/MiningSurvey20082009\\_US.pdf](http://www.fraseramerica.org/commerce.web/product_files/MiningSurvey20082009_US.pdf)

Paul Hayes, 'SA exploration slows', Australian Mining, 12 June 2009,  
[www.miningaustralia.com.au/Article/SA-exploration-slows/486263.aspx](http://www.miningaustralia.com.au/Article/SA-exploration-slows/486263.aspx)

Request under section 596C(1) – award modernisation, Consolidated version, 2 May 2009.

The Hon. Julia Gillard, '20,000 training places online, discussion paper', National Employment Standard, Transcript, Press Conference, 1 April 2008.

Primary Industries and Resources, 'Premier officially opens Prominent Hill mine,' *Media Release*, Government of South Australia, 24 May 2009, viewed 18 June 2009,  
[http://www.pir.sa.gov.au/minerals/press\\_and\\_events/news\\_releases/premier\\_officially\\_opens\\_prominent\\_hill\\_mine](http://www.pir.sa.gov.au/minerals/press_and_events/news_releases/premier_officially_opens_prominent_hill_mine)