



Submission on Work Health and Safety (Resources and Major Hazards) Regulations

Department of Mines and Petroleum

Contact

Nicole Roocke

n.roocke@cmewa.com

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia. CME is funded by its member companies who are responsible for most of the State's mineral and energy production and are major employers of the resources sector workforce in the State.

In 2014-15, the value of Western Australia's mineral and petroleum production was \$99.5 billion. Iron ore is currently the State's most valuable commodity, accounting for more than half the State's production value at \$54 billion. Petroleum products (including LNG, crude oil and condensate) follow at \$24 billion, with gold third at \$9 billion.

The sector is a major contributor to the state and the Australian economy. The estimated value of royalties the state received from the resources sector composed almost 15 per cent of estimated total state revenue in 2015-16, or around \$3.8 billion.

Recommendations

- CME support the modernisation of WHS legislation for the resources and major hazard industries in Western Australia.
- CME support the key features of the model WHS legislation which clarify the way in which duties are owed and allow the legislation to keep pace with the changing nature of work.
- CME considers the enactment of modern, risk based WHS laws may assist in achieving further reductions to the incident rate of serious claims in Western Australia.
- CME recommend opportunity be provided for further consultation on the WHS (R & MH) Regulations once they have been drafted by Parliamentary Counsel's Office.
- CME has previously indicated and repeats here its support for, on an ongoing basis:
 - resources sector representation on the Commission for Occupational Safety and Health as a mechanism to ensure ongoing alignment between general and resources sector safety legislation; and
 - membership of the Safety Legislation Reform Ministerial Advisory Panel to include representation from WorkSafe WA (as committed to at the meeting of the MAP on 26 March 2014).
- CME recommend the DMP continue to be a separate regulator to WorkSafe WA, with DMP the inspectorate possessing the skills and experience to appropriately administer the WHS (R & MH) legislation.
- CME recommend the key principles of the model WHS legislation be adopted in Western Australia in the WHS (R & MH) legislation to achieve national consistency in the key features of the legislation.
- CME recommend the results of the Council of Australian Governments (COAG) review of the model WHS legislation which improve safety outcomes and remove unnecessary prescription should be considered in the context of the development of the WHS (R & MH) Regulations.
- To assist in the 'usability' of the WHS (R & MH) Regulations, CME recommends a user friendly version of the regulations be drafted which sets out, in plain English, the key requirements of the regulations.
- CME recommend careful consideration be given to the entire package of documentation supporting the WHS (R & MH) Act to ensure obligations are not spread

across too many documents by the development of too many codes of practice or other guidance materials.

- CME recommend clarity is provided in the WHS (R & MH) legislation codes of practice will only have evidentiary value and will not be legally binding, by including a provision consistent with section 275 of the Model WHS Act (which was included in the indicative draft of the WHS (Resources) Bill 2015).
- CME recommend clarity be provided in the transitional provisions codes of practice will only apply to the specific industry which the code was developed for so any code developed specifically for a particular industry will not apply to other resource or major hazard facility operations, where this was not the original intent of the code when drafted under the existing legislation.
- CME recommend provisions for enforceable undertakings by duty holders be included in the WHS (R & MH) legislation.
- CME recommends the WHS (R & MH) Act include protections so information provided in statutory required investigation reports is not admissible in evidence in relation to prosecutions of the SSE or other workers.
- CME recommend clarity be provided on what constitutes a 'substantial change' to a mining operation and what the approval process is for any 'substantial change'.
- CME supports the principle of a MSMS.
- CME recommend elements of a MSMS can be developed at a corporate level and apply across multiple sites operated by the same mine operator.
- CME recommend the requirement to review the MSMS within the first 12 months applies to only new mining operations and not all mines.
- CME recommend appropriate guidance be provided on the meaning of 'consultation' so that this does not required 'consensus' between a duty holder and workers to implement changes to the MSMS
- The decision on whether a contractor will work under the mine operator's MSMS or under the contractor's own safety management system should be reserved for the mine operator.
- CME recommend, where a contractor is undertaking specialist tasks which are outside the expertise of the mine operator, in approving the safety management system of the contractor, the mine operator's approval is limited to ensuring there are no inconsistencies with the mine operator's MSMS and the mine operator is not required to approve the work methodology of the contractor and the contractor remain responsible for its safety management system.
- CME recommend removing the requirement to document in the MSMS safety controls which have been considered, but rejected.
- CME recommend prescription be removed from the Principal Hazard Management Plan and mine operators instead be required to identify the hazards that are principal hazards for the mine.
- CME support a risk based approach to management and supervision.
- CME recommend, if minimum prescriptive requirements for competencies are included, these allow for recognition of appropriate overseas or interstate qualifications.
- CME require clarity on the content, form and timing of the risk management training it is proposed be a requirement for statutory role holders and supervisors.

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- CME recommend a system is developed which is accessible to all interested parties which records whether a person has completed the legislative exam and the risk management training.
- CME recommend clarity is provided on the refresher requirements (if any) for risk management training and the legislative exam.
- CME recommend duty holders be able to develop their own health and safety risk management training and deliver this 'in-house'.
- Further, CME recommend where a person has completed equivalent training overseas or interstate this prior training be recognised.
- CME recommend clarity be provided on the meaning of 'supervisor' to ensure the definition is not too broad.
- CME recommend the prescriptive experience requirements be removed from the WHS (R & MH) Regulations and be replaced by a requirement for persons to be competent to hold the role, with the competency framework forming a part of the MSMS.
- CME recommend, if prescriptive experience requirements are maintained, clarity is provided on the currency of the experience.
- CME recommend consideration be given to the term SSE and whether an alternative term which denotes the appointed nature of the role is preferable, given there may be others on site who hold a more senior role in the organisational structure.
- CME recommend clarity be provided on the form and content of the legislative examination and the health and safety risk management course to enable industry to properly assess these proposals.
- CME recommend the WHS (R & MH) legislation allow a mine operator to take a risk based approach to assessing the area over which a SSE will have responsibility.
- CME recommend additional guidance is provided on the meaning of 'situations when the duty holder is not able to fulfil the prescribed duties'.
- CME recommend daily presence of the SSE at site is not required.
- CME recommend a risk based approach be permitted in relation to the span of control a supervisor is expected to have which enables alignment to individual organisational structures.
- CME recommend the SSE be provided with the ability to appoint supervisors.
- CME recommend guidance be provided on the meaning of 'competent persons' and 'appropriate methods' while still ensuring flexibility so risk assessments can be completed at all levels of the business using personnel and a methodology the resource facility operator has selected as appropriate.
- CME recommend consideration be given to whether it is appropriate to include geotechnical structures in the definition of 'structure'.
- CME supports the removal of the requirement to register individual items of plant.
- CME recommend the provisions in the WHS (R & MH) Regulations addressing the registration of plant align with the general industry regulations.
- CME recommend mine operators not be required to check competencies of contractors that have been appropriately selected in accordance with the contractor management process set out in a mine operator's MSMS.
- CME recommend provisions which restrict the ability of a resources facility operator to rely on the expertise of an independent contractor who has been engaged to commission plant are not included in WHS (R & MH) Regulations.

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- CME recommend clarification be provided disassembly of plant will not fall within the definition of demolition work and will not require persons performing disassembly work to hold a demolition licence.
- CME recommend further consultation be held with industry to ensure appropriate exemptions from the prohibition on live electrical work are included in the WHS (R & MH) Regulations.
- CME recommend the provisions addressing remote operations for mines and MHFs be aligned with a duty on the PCBU to ensure workers are not exposed to risk as a result of the operations performed remotely.
- CME recommend consideration be given to the terms used in the WHS (R & MH) Regulations to ensure there is no potential for confusion between a SSE at a mine site and a SSE for a facility governed by a safety case if the SSE is defined differently for these operations.
- CME recommend consideration be given to including an appropriate operator's representative role for a pipeline to ensure that persons are not unintentionally considered to be the SSE by their presence at the site of a pipeline
- CME recommend accommodation outside the facility area be excluded from the safety case.
- CME recommend consultation requirements in the development of the safety case similar to clause 2.11 of the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 (Cth) so:
 - in the development or revision of the safety case for the facility, there is effective consultation with, and participation of, members of the workforce; and
 - the safety case provides adequately for effective consultation with, and the effective participation of, the members of the workforce, so they are able to arrive at informed opinions about the risks and hazards to which they may be exposed on the facility.
- CME recommend the extension of MAEs to the general public be limited to circumstances where members of the public are acting lawfully.
- CME recommend careful consideration is given to the interaction of the definition of MAE with other sections of the WHS (R & MH) Regulations to ensure there is no unintended expansion of duties to trespassers or persons causing malicious damage.
- CME recommend only MAEs that may have health and safety implications for the local community be notified to the local community and that gas supply interruptions be specifically excluded from notification requirements to the local community.
- CME recommend:
 - the transitional period for the development of the MSMS be extended so 1 year is allowed for the development and a further 2 years is allowed for implementation (with alignment to the period proposed for a number of other transitional arrangements); and
 - for existing operations, DMP not require an outline of the MSMS and operations at the mine will be allow to continue during the development and implementation of the MSMS.
- CME recommend all transitional arrangements be the same, so the level of complexity is reduced and so situations are avoided where a MSMS is developed prior to a site complying with requirements of individual duty holders (whose positions will need to be described in the MSMS).

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- CME recommend consideration be given to a transition period which provides flexibility to operators if minor amendments are required to the safety case prior to the 5 yearly review or if the review date for a safety case falls very close to the commencement of the WHS (R & MH) Regulations.
- CME recommend the transitional arrangements allow for safety cases to be submitted in accordance with the requirements of the legislation to be repealed for a period after the commencement of the WHS (R & MH) Regulations.

Context

CME welcomes the opportunity to review and comment on the Consultation Regulation Impact Statement prepared for the Department of Mines and Petroleum on the proposed Work Health and Safety (Resources and Major Hazards) Regulations (WHS (R & MH) Regulations).

CME has consistently supported the reform of work health and safety (WHS) legislation for the resources and major hazard industries in Western Australia to move away from prescription and towards best practice risk and outcome-based focused approaches. CME considers (subject to the issues outlined in this submission) the proposed WHS (R & MH) Regulations move the legislation closer to this aim and CME supports the adoption of modernised WHS legislation for the resources and major hazards industries.

CME support the modernisation of WHS legislation for the resources and major hazard industries in Western Australia.

Improving health and safety outcomes

CME considers the primary driver for the adoption of revised safety legislation for the resources and major hazard facilities industries in Western Australia must be to improve safety outcomes.

CME considers the WHS (R & MH) legislation provides an opportunity to implement best practice, risk based legislation in Western Australia.

It has long been recognised legislation which is non-prescriptive and which requires duty holders to identify hazards, assess risks arising from those hazards and to implement reasonably practicable control measures drives safety improvements and is able to withstand technological change. The references to 'risk based' legislation in this submission refer to those concepts.

There are a number of features of the package of proposed WHS legislation for Western Australia CME considers will improve safety outcomes. Specifically, CME supports the adoption of:

- the concept of a 'person conducting a business' or undertaking, with the primary duty of care being owed to all 'workers'. CME considers these principles address concerns with incomplete coverage and confusion created by the reliance on the 'employment' relationship and provisions deeming persons to be employees for the purposes of the existing legislation;
- the risk based approach set out in chapter 3 of the model WHS Regulations (which it is proposed will be a feature of the WHS (R & MH) Regulations) which encourages innovation in the way in which hazards are managed, allowing the proposed WHS legislation to keep pace with changing hazards created by new methods of working; and
- the duty for duty holders to 'consult, cooperate and coordinate' works with one another where more than one duty holder owes the same duty to ensure where there are overlapping duties and concurrent duties, there is a mechanism to ensure parties are clear on their responsibilities.

CME support the key features of the model WHS legislation which clarify the way in which duties are owed and allow the legislation to keep pace with the changing nature of work.

CME's view is the opportunity presented by the proposal to adopt laws based on the model WHS legislation provides an opportunity to modernise the existing laws so Western Australia has best practice, risk based WHS laws which are able to keep pace with the changing nature

of work. It would be a lost opportunity if the key features of the model WHS legislation were not adopted in Western Australia in the WHS (R & MH) legislation.

The latest comparative statistics show Western Australia has the second lowest (after the Australian Capital Territory) fall in the incidence rate of serious claims from 2009–10 to 2012–13.¹ There is therefore arguably room for improvement for Western Australia to meet the performance of other jurisdictions, which, over the same period, have achieved larger reductions in the rate of serious claims.

CME considers the enactment of modern, risk based WHS laws may assist in achieving further reductions to the incident rate of serious claims in Western Australia.

Consultation process

While CME welcomes the opportunity to comment on the consultation RIS on the WHS (R & MH) Regulations, it is concerned a draft of the regulations has not been made available for public consultation.

The WHS (R & MH) Regulations propose to consolidate the health and safety provisions from 11 existing regulations. The WHS (R & MH) Regulations will therefore be detailed.

In other situations, when significant health and safety reforms have been proposed, a full package of legislation has been released, in draft, to facilitate public consultation. An example is the process followed by Safe Work Australia in releasing an exposure draft of the model WHS Act and the model WHS Regulations for public comment and that followed by WorkSafe WA.

The timetable for the implementation of the WHS (R & MH) Act and the WHS (R & MH) Regulations set out in the RIS document does not provide an opportunity for further consultation on the WHS (R & MH) Regulations once they have been drafted by the Parliamentary Counsel's Office.

CME supports the progression of the WHS (R & MH) legislation. However, in light of the complexity of the WHS (R & MH) Regulations CME is of the view there is a need to review the drafting in the regulations in the context of the definitions used by the Act prior to their finalisation to prevent ambiguity in drafting and unintended consequences.

CME recommend opportunity be provided for further consultation on the WHS (R & MH) Regulations once they have been drafted by Parliamentary Counsel's Office.

Alignment to, and consistency with general industry legislation

CME has consistently supported the modernisation of two separate yet strongly aligned pieces of legislation in Western Australia:

- a bill to modernise the existing OSH Act to apply to general industry; and
- a bill to modernise the *Mines Safety and Inspection Act 1994* to apply to mining, with this legislation consolidated with safety requirements for petroleum and major hazard facilities.

It has long been the resources sector's view specific legislation covering the resources and major hazard facilities industries is required to:

- address sector specific hazards;
- provide dedicated risk management processes; and

¹ See Safe Work Australia, Comparative Performance Monitoring Report, 17th Edition, October 2015, <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/941/cpm-17-edition.pdf>

- provide adequate support from a dedicated regulator.

Many organisations are governed by both the OSH Act and the industry specific requirements addressed by the WHS (R & MH) legislation. It is therefore important for key areas of the legislation which apply to general industry and to the resources sector to be consistent. If inconsistency develops between the pieces of legislation, there is an increased risk safety outcomes will be adversely impacted as inconsistencies develop in the way in which a business understands the operation of the legislation to different parts of its business.

CME acknowledges the process to develop the legislation for general industry and the WHS (R & MH) legislation are being progressed as separate work streams. As the work to develop both Bills and the regulations continues, the level of alignment should be kept under constant review to ensure the separate pieces of legislation do not become misaligned as changes occur over time.

CME has previously indicated and repeats here its support for, on an ongoing basis:

- **resources sector representation on the Commission for Occupational Safety and Health as a mechanism to ensure ongoing alignment between general and resources sector safety legislation; and**
- **membership of the Safety Legislation Reform Ministerial Advisory Panel to include representation from WorkSafe WA (as committed to at the meeting of the MAP on 26 March 2014).**

CME has also previously indicated its support for a separate, well-resourced regulator that understands the hazards associated with the resources and major hazard facilities industries.

CME recommend the DMP continue to be a separate regulator to WorkSafe WA, with the DMP inspectorate possessing the skills and experience to appropriately administer the WHS (R & MH) legislation.

National consistency

It was recognised in the first report (dated October 2008) of the National Review into Model Occupational Health and Safety Laws the implementation of model WHS laws would improve WHS outcomes, as business would be able to spend the time and resources focusing on developing better prevention strategies which they may otherwise have spent on researching and complying with different WHS laws.

CME has consistently supported the broad principles of harmonisation. CME considers, where the principles contained in the model WHS legislation represent best practice and will achieve positive safety outcomes, these principles should be adopted in Western Australia.

In particular, CME continues to support the inclusion in the WHS (R & MH) legislation the key principles from the Model WHS legislation which decrease prescription and which improve safety outcomes.

CME recommend the key principles of the model WHS legislation be adopted in Western Australia in the WHS (R & MH) legislation to achieve national consistency in the key features of the legislation.

Adoption of best practice elements of COAG review and continued focus on improvement

A review of the model WHS legislation was announced on 30 June 2014, with ministers responsible for WHS from all Australian governments agreeing to release an Issues Paper and Consultation regulation impact statement (RIS) examining improvements to the model WHS laws. To date, the results of this review have not been made publically available.

While CME appreciates the WHS (R & MH) Regulations differ considerably from the Model WHS Regulations, CME understands certain elements of the Model WHS Regulations are included in the WHS (R & MH) Regulations.

CME recommend the results of the Council of Australian Governments (COAG) review of the model WHS legislation which improve safety outcomes and remove unnecessary prescription should be considered in the context of the development of the WHS (R & MH) Regulations.

This is imperative to ensure there is a continual focus on removing unnecessary prescription and legislation adopted in Western Australia is best practice and suits the specific operating environment here.

Sources of obligations and user friendliness of the WHS (R & MH) Regulations

User friendliness

It was identified by Robin Stewart-Crompton in his review of the operation of the Work Health and Safety Act 2012 (SA)² that regulations based on the model WHS regulations are 'unwieldy'. Stewart-Crompton proposes this issue can be addressed by:

- publishing the regulations in two volumes; and
- producing a 'user friendly' version of the regulations.

CME shares the concerns voiced by Stewart-Crompton. CME is particularly concerned the WHS (R & MH) Regulations will be a very lengthy document.

CME recommend to assist in the 'usability' of the WHS (R & MH) Regulations a user friendly version of the regulations be drafted which sets out, in plain English, the key requirements of the regulations.

Accessibility and user-friendliness of the WHS (R & MH) legislation will be particularly important in light of the proposed requirements for a number of roles to have successfully completed an examination on the legislative requirements (on which we comment further below).

Codes of Practice

CME supports the reduction of the prescription in the WHS (R & MH) Regulations. It supports a risk based approach to regulation. However, CME is concerned the effect of reducing prescription in the WHS (R & MH) Regulations will be a 'transfer' of obligations to Codes of Practice and other guidance material.

CME recommend careful consideration be given to the entire package of documentation supporting the WHS (R & MH) Act to ensure obligations are not spread across too many documents by the development of too many codes of practice or other guidance materials.

The treatment of Codes of Practice has been dealt with inconsistently in the RIS. Page 61 of the RIS document provides '*if a code of practice has been approved for that jurisdiction, it is legally binding.*' On page 86, it is stated a Code of Practice is '*admissible in court proceedings,*

² Stewart-Crompton, R, Review of the operation of Work Health and Safety Act 2012, November 2014, <https://www.parliament.sa.gov.au/HouseofAssembly/BusinessoftheAssembly/RecordsandPapers/TabledPaperandPetitions/Pages/TabledPapersandPetitions.aspx?TPSelectedView=1&TPProperties=W&TPParliamentSession=53%2c2>

where a code of practice may be regarded as evidence of what is known about a hazard, risk or control.

CME recommend clarity is provided in the WHS (R & MH) legislation codes of practice will only have evidentiary value and will not be legally binding, by including a provision consistent with section 275 of the Model WHS Act (which was included in the indicative draft of the WHS (Resources) Bill 2015).

It is stated in the proposed transitional provisions set out in the RIS '*a code of practice in force which has been approved under the repealed or amended Acts is taken to be an approved code of practice under the proposed WHS (R & MH) Act without the need to take any other step or to publish any notice under section 274*'.

CME supports the adoption of existing codes of practice, relevant to the specific industry for which the code was created. However, it is concerned codes of practice developed for the mining industry will apply to major hazard facilities and petroleum facilities and vice versa.

CME recommend clarity be provided in the transitional provisions codes of practice will only apply to the specific industry which the code was developed for so any code developed specifically for a particular industry will not apply to other resource or major hazard facility operations, where this was not the original intent of the code when drafted under the existing legislation.

Enforceable undertakings

The indicative draft of the WHS (Resources) Bill 2015 proposed the deletion of Part 11 of the Model WHS Act. This part deals with enforceable undertakings.

CME has previously indicated its opposition to the proposed deletion in Western Australia of these provisions. CME repeats its opposition to the removal of enforceable undertakings as an enforcement option in lieu of prosecution.

The removal of enforceable undertakings from the proposed WHS (R & MH) legislation ignores the finding of the second report (dated January 2009) of the National Review into Model Occupational Health and Safety Laws that '*there is no evidence that they have frustrated the objectives of OHS regulation*' and '*the available evidence suggests their use has also been successful in other regulatory fields*'³

CME notes the review of the WHS legislation in South Australia by Stewart-Crompton did not identify any adverse issues with enforceable undertakings. Rather, a recommendation was made the South Australian regulator, SafeWork SA, raise awareness of the option for enforceable undertakings instead of prosecutions, including by consulting industry associations and the legal profession about the views on the most useful information and materials for this purpose.

CME recommend enforceable undertakings be included in the WHS (R & MH) legislation.

Investigation of incidents

Section 39A of the Mock-up - Work Health and Safety (Resources) Bill 2015 set out an obligation on a resources facility operator to investigate all notifiable incidents to the extent reasonably practicable and prepare an investigation report.

CME considers it would be appropriate for certain protections to be included in this section so information provided in such a report cannot be used against the Site Senior Executive (SSE) or other workers. This position would be consistent with section 198(4) of the *Mining and*

³ Stewart-Crompton, R, Mayman, S and Sherriff, B, National Review into Model Occupational Health and Safety Laws, Second Report, January 2009.

Quarrying Safety and Health Act 1999 (Qld) and section 201(4) of the *Coal Mining Safety and Health Act 1999* (Qld). CME considers such protections facilitate the provision of information in investigation reports and therefore improve safety outcomes.

CME recommends the WHS (R & MH) Act include protections so information provided in statutory required investigation reports is not admissible in evidence in relation to prosecutions of the SSE or other workers.

Commencement, suspension and closure of mines

It is proposed requirements to notify the State Mining Engineer of commencement, suspension and closure of mines are included in the WHS (R&MH) Regulations. Further, it is proposed 'approval is required for a 'substantial change''. It is unclear what constitutes a 'substantial change' and what the approval process is.

CME recommend clarity be provided on what constitutes a 'substantial change' and what the approval process is for any 'substantial change'.

Mine Safety Management Systems

It is proposed a Mine Safety Management System (MSMS) be a key component of the risk-based approach to the WSH (R & MH) legislation.

CME supports the principle of a MSMS.

CME considers greater clarity could be provided on the development of a MSMS. In particular, it is unclear the extent to which parts of the MSMS may (for operators of multiple sites) be developed at a corporate level and apply across sites.

CME understand organisations with multiple sites have invested significant resources in centralising policies and procedures which would form a part of the MSMS to reduce confusion, particularly among contractors and employees working across multiple operations.

There is concerned the requirement to have a MSMS for each mine would be interpreted in a way which results in decentralisation. CME considers this is likely to impact negatively on health and safety if confusion arises as to which parts of a MSMS are relevant where the MSMS is decentralised and site specific.

CME recommend elements of a MSMS can be developed at a corporate level and apply across multiple sites operated by the same mine operator.

It is proposed that the MSMS be reviewed in consultation with workers or their representatives within the first 12 months of commencement for new mines, once every 3 years and as necessary.

It is unclear from the RIS if the requirement to review the MSMS within the first 12 months will apply to **all** mines following the introduction of the WHS (R&MH) Regulations because the MSMS will be new at all mines (as opposed to the mining operation being new).

CME recommend the requirement to review the MSMS within the first 12 months applies to only new mining operations not all mines.

CME understands the importance of consultation with workers. However, it considers clarity is needed on the meaning of 'consultation' so worker's views are taken into account, but enable changes to be made to the MSMS without the 'agreement' of workers or the need to achieve the 'consensus' of workers (or their representatives).

CME does not support the adoption of any definition of consultation similar to section 14 of the *Mining and Quarrying Safety and Health Act 1999* (Qld) which defines consultation as discussion with the 'aim of reaching agreement'. CME's view is the guidance provided under the Model WHS Act in the Code of Practice on Work Health and Safety Consultation, Co-operation and Co-ordination is appropriate. This Code of Practice provides '*consultation does*

not require consensus or agreement but that a duty holder must *'allow...workers to contribute to any health and safety decisions'*.

CME considers it is important to provide guidance on the meaning of consultation to avoid situations where industrial interests may impede changes to the MSMS. As an example, it may not be possible to achieve consensus on changes to drug and alcohol testing, although these changes may have significant benefits to ensuring the health and safety of workers. If duty holders are restricted in their ability to implement beneficial changes to the MSMS, this may negatively impact safety outcomes.

CME recommend appropriate guidance be provided on the meaning of 'consultation' so this does not require 'consensus' or 'agreement' between a duty holder and workers to implement changes to the MSMS.

Contractor's MSMS

The WHS (R & MH) Regulations propose the mine operator must develop, maintain and implement a MSMS and a contractor must operate under the MSMS or under their own developed safety management system approved by the mine operator.

While an alternative approach may be negotiated between the parties, **the decision on whether a contractor will work under the mine operator's MSMS or under the contractor's own safety management system should be reserved for the mine operator.**

Where the mine operators determine it is appropriate for a contractor to develop and operate under their own MSMS, it is unclear from the RIS is what form the 'approval' of the contractors MSMS will take. CME is concerned the requirement for a mine operator to approve the safety management system of a contractor imposes responsibility for the contractor's work methodology on the mine operator, who is not otherwise in day-to-day control of the tasks performed by a contractor operating under its own safety management system. This is particularly the case where a contractor is performing tasks that are outside the expertise of the mine operator.

CME considers any 'approval' be limited to reviewing the contractor's system to ensure there are no inconsistencies with the mine operator's MSMS.

CME recommend, where a contractor is undertaking specialist tasks which are outside the expertise of the mine operator, in approving the safety management system of the contractor, the mine operator's approval is limited to ensuring there are no inconsistencies with the mine operator's MSMS and the mine operator is not required to approve the work methodology of the contractor and the contractor remain responsible for its safety management system.

Rejected control measures

The RIS indicates it is the DMP's position the MSMS should identify what controls for a particular hazard have been considered and whether they have been implemented or not. Reasons for rejecting any particular control will need to be specified.

CME is concerned this proposal will:

- potentially create confusion for those using the MSMS because it dilutes the focus on controls that have been implemented and which workers must work in accordance with; and
- create an unnecessary administrative burden for duty holders and will not result in any appreciable improvement in safety outcomes.

CME agrees, as part of the process of developing the MSMS, it should be documented consideration has been given to controls and reasons why these may have been rejected, but

the outcome of this consideration should not be included in the actual MSMS itself. Rather the MSMS should contain information regarding the specific controls to be implemented.

CME recommend removing the requirement to document in the MSMS safety controls which have been considered, but rejected.

Principal hazard management plans

It is proposed a number of principal hazards will be prescribed for the purposes of the principal hazard management plans.

CME is concerned prescribing principal hazards is inconsistent with the risk-based approach taken by the legislation in a number of other areas. CME considers mine operators are best placed to identify the hazards at a mine, to assess the risk arising from those hazards and to implement adequate controls.

CME recommend prescription be removed from the Principal Hazard Management Plan and mine operators instead be required to identify the hazards that are principal hazards for the mine.

Management and supervision

The RIS identifies the management and supervision structure will be a component of the MSMS, with the type, frequency and method of site supervision based on site specific risk management and with required competencies specified in the MSMS.

CME support a risk based approach to management and supervision.

CME considers it is important to allow persons to move between jurisdictions and a prescriptive approach to minimum competencies would unduly restrict the mobility of workers.

CME recommend if minimum prescriptive requirements for competencies are included, these allow for recognition of appropriate overseas or interstate qualifications.

Training requirements

The RIS indicates a number of roles (including the SSE and supervisors) will be required to have successfully completed a mining legislation examination, a health and safety risk management course and have experience as prescribed by the WHS (R & MH) Regulations.

While supportive of the intent of, there is concerned the form of the risk management training has not been settled. Consideration is needed as to whether duty holders would require training prior to being appointed, or if a grace period will be in place for duty holders to complete training (as is currently in place for H&S Representatives).

Prior to supporting fully, **CME require clarity on the content, form and timing of the risk management training proposed to be a requirement for statutory role holders and supervisors.**

CME recommend a system is developed which is accessible to all interested parties which records whether a person has completed the legislative exam and the risk management training.

It is not clear from the RIS whether there is an expectation refresher training will be required on a periodic basis (and what the frequency of any refresher is). CME is concerned refresher training will increase ongoing compliance costs.

CME recommend clarity is provided on the refresher requirements (if any) for risk management training and the legislative exam.

Further, CME considers organisations should have the flexibility to provide 'in-house' training that is tailored to the relevant operating environment of the organisation.

CME recommend duty holders be able to develop their own health and safety risk management training and deliver this 'in-house'.

Further, CME recommend where a person has completed equivalent training overseas or interstate this prior training be recognised.

Definition of 'supervisor'

It is proposed all supervisors will undertake risk management training. The way in which 'supervisor' is defined is not clear.

CME is concerned 'supervisor' may be defined too broadly – for example to cover:

- regional managers (who are not site based), a site supervisor and a site based team leader; and
- 'step-up' or relief supervisors.

The impact of a broad definition of 'supervisor' would be to increase costs to industry. The more people required to complete the mandatory risk management training, the greater the cost. In addition, a wide definition which results in non-site based personnel being considered to be 'supervisors' is unlikely to improve safety outcomes because these persons are not responsible for day-to-day supervision of persons working on site.

CME recommend clarity be provided on the meaning of 'supervisor' to ensure the definition is not too broad.

Prescriptive experience requirements

CME is concerned the prescriptive experience requirements imposed on statutory role holders do not necessarily reflect competencies. CME considers the prescriptive requirements in relation to experience are unnecessarily restrictive and are inconsistent with the intention of removing prescription from the WHS (R & MH) legislation.

CME is aware of the findings of the reviews of fatalities conducted by the DMP which demonstrate, in relation to fatalities between 2000 and 2012, '*44 per cent of fatal accidents occur under the supervision of a person in their first year in the role, with 6 per cent in the first month.*'⁴ However, it is unclear a prescriptive requirement for a person to have a certain number of years' experience before becoming a supervisor would address this issue. It is also unclear if the proposed requirements will apply to 'step-up' or relief supervisors (ie those acting temporarily in the role of supervisor).

It is CME's view it is important to ensure supervisors (and other statutory role holders) are competent to hold the role. The issue of competency is different to experience. This appears to have been recognised by the DMP in the fatality review because it recognises '*the training of supervisors is regarded as a key issue in accident prevention*'.

CME recommend the prescriptive experience requirements be removed from the WHS (R & MH) Regulations and be replaced by a requirement for persons to be competent to hold the role, with the competency framework forming a part of the MSMS.

It is unclear from the RIS whether there are any currency requirements to the experience requirements.

CME recommend, if prescriptive experience requirements are maintained, clarity is provided on the currency of the experience.

⁴ Government of Western Australia, Department of Mines and Petroleum, Fatal Accidents in the Western Australian Mining Industry 2000-2012, http://www.dmp.wa.gov.au/Documents/Safety/MSH_R_FatalAccidents200012.pdf

Site Senior Executives

Concern has been expressed over the use of the term Site Senior Executive and the potential to create confusion because of the term 'executive'. In common parlance, the term 'executive' denotes a person or group of people with supervisory authority in an organisation (eg the Chief Executive Officer or the Executive Management Team).

In contrast, the 'Registered Manager' (as the term now used) is an appointed person. They are not necessarily an 'executive' within the relevant business but are appointed to a role for the purpose of meeting statutory requirements. There may be more senior people on the site (from time to time) but those senior people are not the Registered Manager.

CME recommend consideration be given to the term SSE and whether an alternative term which denotes the appointed nature of the role is preferable, given there may be others on site who hold a more senior role in the organisational structure.

It is proposed every mine will need to appoint a SSE (which will replace the role of 'Registered Manager'). The SSE must have passed a mining legislation test, completed a health and safety risk management course and have at least 2 years work in experience in or about a mine.

As discussed above, CME is concerned the prescriptive requirements in relation to experience are unnecessarily restrictive. Further, CME is concerned clarity has not been provided on the structure and form of the legislative examination or the health and safety risk management course.

CME recommend clarity be provided on the form and content of the legislative examination and the health and safety risk management course to enable industry to properly assess these proposals.

CME is aware of a number of situations where flexibility is required in the appointment of registered managers to have responsibility for more than one operation. Such flexibility would result in cost savings for industry because it may allow less SSEs to be appointed, in circumstances where risks to health and safety will not be increased by allowing a SSE to be responsible for a wider area.

It is unclear from the RIS whether the WHS (R & MH) legislation will allow a mine operator to take a risk based approach to the appointment of an SSE for more than one operation.

CME recommend the WHS (R & MH) legislation allow a mine operator to take a risk based approach to assessing the area over which a SSE will have responsibility.

It is proposed duty holders (i.e. SSE, underground and quarry managers etc.) will be required to fulfil prescribed duties. The RIS goes on to state the management and supervision structure set out in the MSMS must deal with situations when the duty holder cannot fulfil their duties.

CME supports the removal of prescriptive requirements of appointing alternates and deputies to fill prescribed roles.

CME recommend additional guidance is provided on the meaning of 'situations when the duty holder is not able to fulfil the prescribed duties'.

CME considers there needs to be flexibility to allow for commute schedules and, based on a risk based approach, a mine operator setting the geographical area the SSE has responsibility for. In particular CME considers clarity should be provided on the requirement for a SSE to be at, or in proximity to a mine to clarify whether daily presence at a mine is required to fulfil prescribed duties.

In an environment where technology allows reliable communication between two place and to ensure the WHS (R&MH) Regulations remain fit for purpose as technology improves, CME considers it is unnecessary to prescribe that daily presence at site is required.

CME recommend daily presence of the SSE at site is not required.

Supervisors

The RIS proposes, based on a risk assessment, the mine operator must appoint one or more supervisors for an allocated area or type of operation. While the significance of the role of the supervisor is recognised in a safety and health context, this is a role awarded to an employee within an organisational structure. Subject to the definition and process required, appointing supervisors which do not align with the organisational structure will be very restrictive to, particularly in the case of step-up or relief supervisors and development opportunities for employees

CME recommend a risk based approach be permitted in relation to the span of control a supervisor is expected to have which enables alignment to individual organisational structures.

CME is concerned the appointment process is unnecessarily restrictive and creates an administrative burden for the mine operator, potentially adding to operational costs.

CME recommend the SSE also be provided with the ability to appoint supervisors.

Risk management

It is proposed specific risk management provisions will be included in the WHS (R & MH) Regulations. CME supports this approach. It is consistent with the position CME has consistently supported for the WHS legislation for Western Australia to take a risk based approach.

The RIS provides risk assessments must be conducted by a competent person using appropriate methods.

CME is concerned a lack of clarity has been provided on the intention behind the meanings of 'competent person' and 'appropriate methods' in this context.

Risk assessments are typically conducted at different levels within operations, with the use of many methods. Examples are a site wide style 'bow tie' assessment to identify critical risks and control measures which would likely involve senior management, health and safety personnel and relevant workers. A further example is a 'take 5' assessment which would be completed by workers prior to the completion of a task.

The competencies required to undertake the assessment and the methodology in the two examples are clearly very different. CME is concerned a prescription in the legislation relating to the competencies required to complete risk assessments and in relation to what methods are considered to be 'appropriate' may be unnecessarily restrictive and have the unintended consequence of stifling innovation in how risk assessments might be conducted. For example, the development of an interactive style risk assessments completed on tablet computers by workers which are growing in popularity because of the way in which workers engage with this type of risk analysis could be hampered if this was not identified in the legislation as an 'appropriate' method.

CME recommend guidance be provided on the meaning of 'competent persons' and 'appropriate methods' while still ensuring flexibility so risk assessments can be completed at all levels of the business using personnel and a methodology the resource facility operator has selected as appropriate.

Plant and structures

Definition of 'structures'

The RIS provides the definition of the term 'structure' will include geotechnical structure. All provisions applicable to mechanical structures will also apply to geotechnical structures.

CME is concerned the definition of 'structure' is defined too widely and it is not appropriate for all the provisions relating to structures in the WHS (R&MH) Regulations to apply to geotechnical structures.

CME recommend consideration be given to whether it is appropriate to include geotechnical structures in the definition of 'structure'.

Registration of plant

The RIS proposes the requirement to register individual items of plant will be removed from the proposed legislation.

CME supports the removal of the requirement to register individual items of plant.

As discussed above, CME has consistently advocated for alignment between the WHS legislation for the resources industry and in general industry. The removal of the requirement to register individual items of plant is one area where it is important to achieve alignment because of the role WorkSafe WA will play in plant registration.

CME recommend the provisions in the WHS (R & MH) Regulations addressing the registration of plant align with the general industry regulations.

Competencies of designers

It is proposed the mine operator must have procedures in place to check the competencies of designers and other duty holders.

CME is concerned with this proposal. It is unclear what is envisaged by the proposal. CME considers the contractor management section of the MSMS would be sufficient to ensure mine operators appropriately select and manage contractors. Further, the general duties imposed on the mine operator are sufficient to ensure the mine operator takes reasonably practicable steps to ensure the health and safety of workers.

Where the contractor selection process has identified an appropriate contractor, it is unclear why it would be necessary for the mine operator to further check the competencies of designers and other duty holders. This proposal has the potential to impose unnecessary onerous obligations on mine operators and increase ongoing costs of complying with the WHS (R & MH) legislation.

It is unclear what the reach of these provisions is intended to be. As an example, if a mine operator engages a specialist to provide it with autonomous haulage trucks, it is unclear if these provisions would require the mine operator to check the competencies of the specialist software and computer supplier that provide expertise and parts to the contractor the mine operator has engaged. Clarity is required to ensure these provisions do not create an unnecessary and onerous burden on resource facility operators.

CME recommend mine operators not be required to check competencies of contractors who have been appropriately selected in accordance with the contractor management process set out in a mine operator's MSMS.

Commissioning of plant and structures

It is proposed *'the resources facility operator must ensure that the plant or structure design meets the safety and health requirements before the plant is manufactured, installed, or commissioned and a structure is constructed or commissioned at the mine'*.

CME is concerned with this proposal. The inclusion of a requirement to verify the safety of plant or structures when these duties are already owed by the manufacturer or supplier will increase costs to resource facility operators and appears to be inconsistent with existing case law which allows, where the expertise of the parties is different, a principal to rely on the expertise of a contractor.

The proposed position appears to cut across the position set out in the cases arising from Cyclone George which allow a principal to engage and expert contractor and not to independently verify the contractor has performed its duties.

CME recommend provisions which restrict the ability of a resources facility operator to rely on the expertise of an independent contractor who has been engaged to commission plant are not included in WHS (R &MH) Regulations.

Demobilisation of plant

It is proposed demolition work on mine sites must be performed by an approved person for the category of work under the existing Occupational Safety and Health Regulations.

CME is concerned this requirement may have unintended consequences for the deconstruction and demobilisation of plant from site.

CME recommend disassembly of plant will not fall within the definition of demolition work and will not require persons performing disassembly work to hold a demolition licence.

Electrical work

The RIS provides new provisions dealing with live electrical work will be introduced. The detail of these provisions is unclear because they are part of a wider review of the treatment of live work by WorkSafe WA and EnergySafety.

CME support, in principle, the general prohibition on live electrical work. However, CME is also considers it is necessary to permit, in certain circumstances appropriate exceptions where the risk associated with live work may be managed through control measures and an absolute prohibition on live work in all cases is unnecessary.

CME recommend further consultation be held with industry to ensure appropriate exemptions from the prohibition on live electrical work are included in the WHS (R & MH) Regulations.

Management of asbestos

It is proposed the WHS (R & MH) Regulations will include a general prohibition on work involving asbestos, subject to certain exceptions.

CME recommend, to the extent possible, the WHS (R & MH) Regulations relating to asbestos be aligned to the WHS regulations for general industry.

Mental health

The RIS indicates 'there will be no specific regulation covering mental health. However, there will be reporting requirements and *'as with all diseases, if the disease is work related the regulator must be notified as required'*.

CME is concerned insufficient clarity has been provided in the RIS to enable an assessment to be made of the potential impact of this proposed change. CME's view is it is not practical to suggest industry would be in a position to form a view on whether a mental health condition was 'work related'. Mental health is a complex area and the causes of mental health conditions may be diverse. It is likely only a treating medical practitioner would be able to identify the presence and causes of a mental health condition. Further, CME has concerns regarding how such a reporting requirement would work in practice, given notification requirements are typically required immediately and a mental health condition may develop over a long period, it would be difficult to identify when a condition became notifiable.

An alternative approach may be for the DMP to collect statistic on the number of workers compensation claims accepted for mental health injuries.

CME recommend additional clarity is provided on what mental health conditions the DMP expects will be notified.

Petroleum

It is proposed the prescriptive matters addressed in Part 4 of the Petroleum Pipelines (Occupational Safety and Health) Regulations 2010 be deleted from the legislation and addressed by the safety case.

CME supports the removal of prescriptive requirements addressing drugs and intoxicants, fatigue, hazardous substance and noise and for these to be addressed in the safety case.

It is proposed accident and dangerous occurrence reporting move from monthly to quarterly reporting.

CME supports the proposal for reporting on accidents and dangerous occurrences being quarterly.

CME is concerned that it may not be possible in all circumstances to delineate between site and office based man hours.

CME recommend quarterly reporting does not require a break down between site based and office based man hours.

Safety cases

Early engagement

It is proposed the WHS (R & MH) Regulations will formalise a process of early engagement.

CME is concerned the formalisation of early engagement processes may add to administrative costs and, if the early engagement is non-binding, does not appear to provide certainty.

CME recommend if early engagement in the development of a safety case is formalised, the decisions of the DMP be binding so that certainty is provided to the resource facility operator.

Potential declaration of pipelines as major hazard facilities

There was a concern raised during the course of the workshop on safety cases a pipeline could be declared to be a MHF. DMP has indicated it does not see any need to include provisions in the WHS (R & MH) Regulations to ensure a pipeline cannot be declared a MHF. However, DMP has indicated Parliamentary Counsel will consider this when drafting the legislation.

CME remains concerned that a pipeline which is extended over a geographical area and which has characteristics very different to a MHF could be declared a MHF under the proposed legislation.

CME recommend the WHS (R & MH) Regulations include provisions so a pipeline which is not otherwise part of a MHF cannot be declared a MHF.

Remote operations of MHFs

The RIS proposes the treatment of remote operations of MHFs will be as follows:

- If the activity undertaken affects the site, the WHS (R & MH) Regulations apply and a safety case is required.

- If the activity only affects local workers (e.g. workers in the control room), they are covered by WorkSafe.

CME is concerned there is the potential for confusion if remote operations relevant to mining are addressed in a different way to remote operations for MHFs.

CME recommend the provisions addressing remote operations for mines and MHFs be aligned with a duty on the PCBU to ensure workers are not exposed to risk as a result of the operations performed remotely.

Definition of SSE

It is proposed the safety case will define the SSE.

CME is concerned if the same terminology is used, but with a different definition, there is the potential for confusion.

CME recommend consideration be given to the terms used in the WHS (R & MH) Regulations to ensure there is no potential for confusion between a SSE at a mine site and a SSE for a facility governed by a safety case if the SSE is defined differently for these operations.

CME is also concerned a SSE will be required for a pipeline. As pipelines are normally unmanned, it is possible that the proposed requirement for a SSE will have unintended consequences for pipelines. As an example, it is possible that a person that is ancillary to the operation of a pipeline, such as a cleaning contractor, may be the only person at a site which the pipeline runs through.

It is important a person who is at a pipeline site is not automatically considered to be the SSE. Any person at a site performing work ancillary to the operation of the pipeline should only be accountable for their own activities, not the broader operation of the pipeline which is always occurring at the site.

CME recommend consideration be given to including an appropriate operator's representative role for a pipeline to ensure persons are not unintentionally considered to be the SSE by their presence at the site of a pipeline.

Treatment of accommodation

The RIS provides accommodation must be covered by a safety case if it is owned or under the control of the operator; necessary for the worker's engagement; and not within a town site or the metro region. The safety case is proposed to cover accommodation irrespective of whether the accommodation is outside of the title area / facility.

It is unclear what the proposed breadth of coverage to accommodation will be. CME is concerned the safety case will extend to accommodation outside of the facility (such as accommodation in a separate work camp). It is unclear what safety benefits are derived from extending the safety case to camp accommodation where major accident events are unlikely to occur. Further CME is concerned what activities would need to be addressed in the safety case. As an example, CME is concerned the safety case would need to cover day-to-day activities such as food preparation and cooking and the leisure time pursuits of the workers residing in the accommodation.

CME recommend accommodation outside the facility area be excluded from the safety case.

Health and safety representative review of the safety case

The RIS indicates the DMP is considering the inclusion of provisions to allow a health and safety representative (HSR) to request a review of the safety case.

CME has concerns this proposal will create uncertainty for resource facility operators and will increase costs associated with the development of safety cases. Further, CME is concerned the review provisions could be misused as a part of an industrial relations agenda.

CME acknowledges workers have an extremely important role to play in the development of a safety case. Such worker participation is important to ensure worker views are considered. However, CME considers this important role can be fulfilled without including a mechanism which would allow a HSR to request a review of the safety case prior to its implementation when it has already been developed by the resource facility operator in consultation with relevant workers.

CME recommend consultation requirements in the development of the safety case similar to clause 2.11 of the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 (Cth) so:

- **in the development or revision of the safety case for the facility, there is effective consultation with, and participation of, members of the workforce; and**
- **the safety case provides adequately for effective consultation with, and the effective participation of, the members of the workforce, so they are able to arrive at informed opinions about the risks and hazards to which they may be exposed on the facility.**

In this case 'members of the workforce' includes members of the workforce who are:

- identifiable before the safety case is developed; and
- working, or likely to be working, on the relevant facility.

Land use changes

The RIS indicates a review of the safety case will be required if there are land use changes, where the risk has significantly increased and the safety case does not adequately cover this.

CME is concerned the proposal has the potential to create significant uncertainty for resource facility operators and, ultimately, may result in a situation where an operational facility may be put in a position where it can no longer operate because of a land use change.

CME recommend a mechanism be included in the WHS (R & MH) legislation to require consultation with the operator prior to any land changes that would require a revision of the safety case to ensure operators are not exposed to uncertainty.

Notifiable incidents

The RIS indicates a list will be developed for notifiable incidents specifically relating to petroleum, MHFs and pipelines.

CME is concerned inconsistency between the types of notifiable incidents will create confusion for resource facility operators. In addition, the development of different lists of notifiable incidents will increase compliance costs because it will require resource facility operators to provide training to workers on the incidents requiring notification and will require the development of internal record keeping systems to record notifiable incidents.

CME recommend, where possible, there be alignment between the proposed list of notifiable incidents and the definition of 'dangerous occurrences' in the Commonwealth OPGGS Act.

Record book

The RIS indicates the DMP's view is a record book for MHFs would be beneficial.

CME supports, in principle, a proposal which supports centralised record keeping. However, CME is concerned prescriptive requirements for a record book will not allow an operator to develop their own record keeping processes which keep pace with technological change.

CME recommend the requirements to maintain records be non-prescriptive to allow the form of record keeping to keep pace with technological change.

Major accident events

It is proposed *'the definition of MAE will be expanded to cover the general public'*. CME is concerned the expansion will have unintended consequences in relation to matters the resource facility operator cannot control. As an example, it is unclear the extent to which a resources facility operator would be required to address situations where a person is trespassing at the facility.

CME recommend the extension of MAEs to the general public be limited to circumstances where members of the public are acting lawfully.

CME recommend careful consideration is given to the interaction of the definition of MAE with other sections of the WHS (R & MH) Regulations to ensure there is no unintended expansion of duties to trespassers or persons causing malicious damage.

It is proposed the WHS (R & MH Regulations) require the local community to be notified of MAEs that may affect the local community. CME is concerned this may lead to reporting of matters that would not have an adverse impact on the health and safety of the local community. In addition, CME is concerned the requirements may overlap with other legislative requirements, for example, those that relate to notifying the interruption of gas supply.

CME recommend only MAEs that may have health and safety implications for the local community be notified to the local community and that gas supply interruptions be specifically excluded from notification requirements to the local community.

Transitional arrangements

Transitional arrangement for the MSMS

The RIS indicates the WHS (R & MH) Regulations will require the development and implementation by the mine operator of a MSMS within 1 year of commencement of the WHS (R & MH) Regulations. Further, it is proposed *'the mine operator must submit to the DMP, an outline of the mine safety management system to obtain approval for mining operations'*.

Due to limited information available on the content and structure of the MSMS, CME is concerned the time proposed to develop and implement the MSMS will be insufficient. In particular, if the time to implement the MSMS requires duty holders to significantly rework existing safety management systems and have completed specified training, the implementation timeframe is likely to prove challenging to meet.

Further, it is unclear what process is proposed for existing operations. CME is concerned if an outline of the MSMS will be reviewed by the DMP for all existing operations, this will create an administrative burden for the DMP which will likely make it difficult for mine operators to meet the proposed date when a MSMS must be implemented by.

In circumstances where a contractor must seek approval from the mine operator of its safety management system, it is likely that a 1-year transitional period for the MSMS will be insufficient. This is because the mine operator will take time to develop its MSMS, after which a contractor must develop its management system and obtain approval of the system from the mine operator.

CME recommend:

- **the transitional period for the development of the MSMS be extended so 1 year is allowed for the development and a further 2 years is allowed for implementation (with alignment to the period proposed for a number of other transitional arrangements); and**
- **clarity be provided, for existing operations, DMP will not require an outline of the MSMS and operations at the mine will be allowed to continue during the development and implementation of the MSMS.**

Transitional arrangements for mining

Transitional arrangements which allow certain requirements to start after the commencement of the remainder of the WHS (R & MH) legislation have been proposed.

CME is concerned with the workability of transitional arrangements in circumstances where the time periods do not align. As an example, it is difficult to see how the MSMS can be developed which sets out the management structure if the requirements in relation to the SSE and other statutory roles commence after the MSMS must be developed.

CME recommend all transitional arrangements be the same, so the level of complexity is reduced and so situations are avoided where a MSMS is developed prior to a site complying with requirements of individual duty holders (whose positions will need to be described in the MSMS).

Transitional arrangements for safety cases

It is proposed transitional requirements will be included in the WHS (R & MH) Regulations to allow approved safety cases/reports to remain in force until the document is due for renewal (either because of a significant change or due to the five-yearly review).

It is unclear from the detail provided in the RIS how these transitional arrangements will operate if:

- there is a minor revision to a safety case; or
- an existing safety case falls due for review shortly after the commencement of the legislation.

CME is concerned an onerous obligation may fall on some operators if:

- a minor review to a safety case accepted under the repealed legislation triggered a complete review of the safety case – requiring compliance with the new requirements; or
- the renewal of the safety case is due very shortly after the commencement of the legislation because this would require substantial work to comply with the new requirements.

CME recommend consideration be given to a transition period to provide flexibility to operators if minor amendments are required to the safety case prior to the 5 yearly review or if the review date for a safety case falls very close to the commencement of the WHS (R & MH) Regulations.

CME is also concerned the transitional arrangements do not address situations where a safety case is under development (in accordance with the requirements of the current legislation) but where the safety case has not been accepted at the time the WHS (R & MH) Regulations commence. There could be a number of instances where this might occur, for example:

- where a safety case is submitted to the DMP but not yet approved when the WHS (R & MH) Regulations commence; and

- where a safety case is under development before the commencement of the WHS (R & MH) Regulations, but due to be submitted to the DMP after the commencement of the WHS (R & MH) Regulations.

CME recommend the transitional arrangements allow for safety cases to be submitted in accordance with the requirements of the legislation to be repealed for a period after the commencement of the WHS (R & MH) Regulations.

Anticipated costs

The RIS sets out an estimate of the implementation and ongoing costs associated with the WHS (R & MH) Regulations.

CME is concerned the estimated costs do not accurately reflect the likely costs to industry arising from the legislation and are likely to have been significantly underestimated. As examples:

- one CME member is undertaking a gap analysis of their existing arrangements against the proposed requirements of the legislation. This task is costing approximately \$200,000;
- a further large mining company estimates it will have 7 to 10 people working full time for a year in a team to ensure the organisation can appropriately respond to the new legislation;
- if a 2-day health and safety risk management course is required for supervisors, the cost to one company with 600 supervisors is approximately \$1m (based on 1,200 working days).

These costs may be offset by the cost savings achieved by risk based legislation and safety improvements achieved as a result of the legislation. However, it is difficult to accurately assess the net cost arising from the legislation.

Conclusion

In conclusion, CME supports in principle the adoption of the WHS (R & MH) Regulations. However, it is important the focus of reforms continue to be on achieving improved safety outcomes. Alignment and consistency with general industry safety legislation (where possible) is paramount, as is ensuring transitional arrangements are appropriate.

CME looks forward to continuing to work closely with the DMP and other stakeholders to progress these important reforms.

If you have any further queries regarding the above matters, please contact Nicole Roocke on (08) 9220 8500 or n.roocke@cmewa.com.

Authorised by	Position	Date	Signed
Nicole Roocke	Deputy Chief Executive	16/09/2016	
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