



Submission on WHS (General), WHS (Mines) and WHS (Petroleum and Geothermal Energy Operations) Regulations

Department of Mines Industry Regulation and Safety

Contact



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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak representative body in Western Australia for the resources sector. CME is funded by member companies responsible for more than 90 per cent of the State's mineral and energy production and workforce employment.

In 2018-19, Western Australia's mineral and petroleum industry reported a record value of \$145 billion in revenue.¹ Iron ore is currently the State's most valuable commodity at \$78 billion in annual revenue. Petroleum products (including crude oil, condensate, liquefied natural gas, liquefied petroleum gas and natural gas) followed at \$38 billion, with gold third at \$12 billion.

The value of royalties received from the sector totalled \$6.5 billion in 2018-19, accounting for 20 per cent of Government revenue.^{2,3,4,5} In addition to contributing to a third of the State's total industry Gross Value Added Products,⁶ the sector is a major contributor to the local, State and Australian economies.

Summary of recommendations

CME appreciates the opportunity to provide comment as part of the Department of Mines, Industry Regulation and Safety's (DMIRS) public consultation on proposed content of the WHS Regulations, WHS (Mines) Regulations and WHS (Petroleum and Geothermal Energy Operations).

Key CME recommendations are outlined below with further detail in the subsequent sections of this submission and in the detailed Appendix. CME:

- Continues to support the Government's single Act reform approach provided the issues identified in the below submission are addressed to ensure the legislative package is appropriate to the Western Australian environment.
- Supports comprehensive consultation processes, and is concerned that the final content of the proposed WHS Act (WA) and the detail of the proposed Regulations has not been made clear as part of this phase of consultation on the Regulations. Acknowledging this, CME recommends that opportunity be provided for further consultation on the draft Regulations once they have been finalised by the Parliamentary Counsel's Office. Recognising that the Government is working to tight timeframes to progress these reforms, CME further recommends DMIRS issue a summary of the feedback put forward during the consultation process, and outline how this has resulted in changes to the Regulations, at an absolute minimum.
- Does not support the proposed conjunctive structure of the Regulations and recommends separate, standalone regulations instead be developed for mining and PGEO industries relative to other workplaces, mirroring common provisions as required.

In regards to the WHS (Mines) Regulations, CME recommends:

- Further clarity be provided on how the Regulations will apply to Remote Operations Centres (ROC) and other offsite management functions.
- DMIRS clarify that fixtures, fittings, plants and structures at the place are only regulated by the WHS (Mines) Regulations to the extent that they are associated with mining.
- DMIRS clarify whether smelting and refining, and operation of remote borefields are intended to be regulated as a 'mining operation' under the WHS (Mines) Regulations.

¹ Government of Western Australia, *Latest statistics release: Mineral sector highlights*, Department of Mines, Industry Regulation and Safety, September 2019: <http://dmp.wa.gov.au/About-Us-Careers/Latest-Statistics-Release-4081.aspx>

² Includes North West Shelf grants but excludes monetary contributions via State taxes, levies, fees and charges.

³ Government of Western Australia, *Industry activity indicators: Royalties*, Department of Mines, Industry Regulation and Safety, September 2019: <http://dmp.wa.gov.au/About-Us-Careers/Latest-Resources-Investment-4083.aspx>

⁴ Government of Western Australia, *Budget paper no. 3: 2019-20 Economic and fiscal outlook*, Western Australian State Budget 2019-20, Department of Treasury, May 2019, p. 68.

⁵ Government refers to the Government of Western Australia unless otherwise indicated.

⁶ Duncan, A., Kiely, D. and Salazar, S., *Quarterly economic Commentary: March 2019*, Bankwest Curtin Economics Centre, Curtin University, April 2019, p. 4.

- DMIRS clarify whether the airstrip at the mine site and associated facilities will be regulated as a 'mining operation' under the WHS (Mines) Regulations.
- Further clarity be provided on what is 'in the vicinity of' the mine.
- Further clarity be provided on whether DMIRS intends to transition over existing instruments of declaration which carve certain operations out of the *Mines Safety Inspection Act 1994* jurisdiction.
- DMIRS clarify whether unincorporated joint ventures fall within the definition of 'mine operator' and if so, allow the Joint Venture Manager to be the 'mine operator' on behalf of the Joint Venture participants.
- The WHS (Mines) Regulations use consistent terminology for remote and autonomous plant and equipment, that is sufficiently broad to cover different grades of automation, including those without a human operator, and that is flexible enough to allow for the rapidly changing nature of this equipment.
- The prescriptive experience requirements be removed from the WHS (Mines) Regulations and replaced with a general competency requirement, with the competency framework forming a part of the Mine Safety Management System.
- Schedule 8 be amended to require individuals to have "successfully completed *appropriate* health and safety risk management *training*", and that further consultation occur between DMIRS and industry to ensure that training standards are designed to practically lift competency and, importantly, measurable improvement in health and safety outcomes.
- The WHS (Mines) Regulations allow a mine operator to take a risk based approach to assessing the area over which an SSE will have responsibility, and clarify the meaning of the requirement that the SSE be 'readily available'.
- The WHS (Mines) Regulations clarify the responsibilities of Site Senior Executives (SSE) in respect of ROCs.
- The supervisor statutory role is confined to those appointed by the SSE to support the SSE.
- There be flexibility in training requirements for vacant and alternate statutory function holders to allow for commute schedules and, based on a risk based approach, a mine operator setting the SSE's geographical area of responsibility.
- Requirements for shift handover instead focus on ensuring communication, rather than prescribing content or format and that shift handover information not form part of the mine record.
- Clarity be provided that all elements of a Mine Safety Management System (MSMS) are able to be applied across operations, and the decision to vary any particular element for a given site should be the mine operator's to make.
- The WHS (Mines) Regulations provide flexibility for a contractor, at the mine operator's discretion, to develop their own MSMS, or work under the mine operator's MSMS.
- The requirements around reviewing a contractor's MSMS be clarified, particularly to account for the situation where contractors are undertaking specialist tasks which are outside the expertise of the mine operator. CME recommends that the mine operator should not be required to approve the contractor's work methodology, and that it be clarified that the contractor remains responsible for its safety management system.
- Clarity be provided on whether changing out contractors necessitates a review of a mine operator's MSMS.
- The consultation requirement connected with the development, implementation and review of MSMS be clarified, or qualified by an obligation to take reasonable steps.
- A risk-based approach to hazard identification for the Principal Hazard Management Plans (PHMP) be adopted, with no prescribed principal hazards. 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 recommends either:
 - (a) the reporting requirements for major change (M43, Schedule 2 of the NMSF) and substantial change (M14) to autonomous and semi-autonomous plant be distinguished; or

(b) that one requirement be removed; or

(c) that M43 cross-refers a person back to the notification obligation in M14.

- Software or hardware upgrades that do not fundamentally change the operation of autonomous and semi-autonomous equipment should be excluded from change notification requirements.
- The requirement to manage worker fatigue and alcohol and drug consumption be qualified to so far as reasonably practicable, and confined to matters in the mine operator's control.
- There be no entitlement for a Health and Safety Representative to seek review of an asbestos control measure in the WHS (Mines) Regulations.
- If CME's proposal for separate, standalone WHS (Mines) Regulations is not adopted, the exposure standards in the WHS (Mines) Regulation apply to mining operations to the extent of any inconsistency with the WHS (General) Regulations.
- Consideration should be given to confining M88 to only require air monitoring for high risk mining activities as defined by NMSF M43 and Schedule 2.
- "Competent person" within the context of M89 which relates to requirements if air quality requirements and air safety exposure standards not complied with, be clarified or removed.
- If CME's proposal for separate, standalone WHS (Mines) Regulations is not adopted, the timeframes in relation to air monitoring records in the WHS (Mines) Regulation apply to mining operations to the extent of any inconsistency with the WHS (General) Regulations.
- Industry be given another opportunity to comment formally on the Regulations once findings and recommendations from the Reynolds Review of radiation safety regulation are available, given their relevance to these Regulations.
- Division 4 - Radiation include a relevant reference to "comply with your radiation registration requirement to comply with RPS 9". The subsequent provisions within Division 4 should be then updated to remove detailed reference to specific clauses within RPS 9 and duplicated content throughout.
- The risk based approach to health monitoring proposed in the Regulations be retained and recommends consultation with industry should any changes in this area be pursued into the future.
- That the concept of fitness for work is amended to include physical and mental health to the extent that might create workplace hazards, require mining operators to manage risks so far as reasonably practicable and include an additional duty for workers in respect of fitness for work.
- The obligation to manage risk in respect of autonomous equipment in NSMF M42 be cast in the WHS (Mines) Regulations as a requirement to manage risks so far as practicable, not to make the plant without risk so far as is reasonably practicable.
- That the regulations include protections against incrimination for the SSE, workers and the mine operator for content in a regulatory report under NMSF M146-M146.
- That DMIRS instruct the Office of Parliamentary Counsel to align these requirements in NMSF M146 with Part 3 of the model WHS Act for consistency.
- The definition of 'high potential incident' be an incident that resulted in, or had the potential to result in, serious injury or fatality, and that M146(d), (l) and (p) be amended or removed from the definition.
- The transitional period for the development of the MSMS, and for complying with training requirements for statutory roles, both be extended to 2 years for implementation (with alignment to the period proposed for a number of other transitional arrangements). This position is conditional upon industry having the opportunity to review final proposed detail of the regulations and these regulations being separate. If this does not occur CME would expect longer transition periods to be provide for.

In regards to the WHS (General) Regulations, CME recommends:

- The requirement for five days of training be removed, or qualified as 'subject to availability and accessibility of the training'.

- The regulations continue to provide scope for PCBUs to develop and deliver HSR training, and that there be not entitlement for a HSR to choose their training course.
- Refresher training be able to be delivered internally, and is only required once during a HSR's three year term.
- The current risk-based approach to pay and scheduling of training be retained, but if prescribed, there should be provision for training to occur in a rostered off swing, and for training to be remunerated flexibility such as by time in lieu.
- A non-prescriptive risk based approach be taken to negotiating work groups, for example by making regulation 17 of the Model WHS Regulations non-mandatory or moving it to guidance material.
- Regulation 16 be clarified to include the PCBU and its workers as the parties to work group negotiations.
- The status-quo position in the OSH Act be maintained, allowing persons to apply for a high risk work licence in Western Australia, based on their recognised qualification.
- Regulations 87(2)(f)(ii) of the Model WHS Regulations be adapted for Western Australia to remove the requirement to provide a certification issued 'no more than 60 days prior' and replace it with a 'recently issued' certification or a longer prescribed period, or with a requirement to provide a certification issued 90 days prior.
- The Regulations should allow persons to apply for a plant registration or asbestos removal license in Western Australia, based on their interstate qualification.
- The period for a PCBU to seek external review of an improvement or prohibition notice be 14 days, or at least 7 days under the proposed WHS (General) Regulations, to enable a meaningful opportunity for review.
- At least as relevant to mining, at a minimum, the WHS (General) Regulations reflect the MSI Act and the Code of Practice for the Safe Removal of Asbestos 2nd Edition, section 9.3.
- The WHS (General) Regulations provide that it is not necessary to provide a copy of health monitoring records to the worker on cession of employment if the results are provided to the worker at the time the record is created. Regulation 368 of the Model WHS Regulations should be retained and not replaced with a more prescriptive system.
- The noise exposure standard, and requirements on not exceeding that standard are aligned to the status quo under the OSH Act and MSI Act, in place of those in Chapter 4, Part 4.1 of the Model WHS Regulations
- The implementation of PPE not be the reference point for determining whether a worker is at a high risk of exposure to noise. Rather, recognised standards on noise exposure should be applied in determining what high risk is.
- A more risk based approach to audiometric testing, in line with health monitoring practices for other health hazards. At a minimum CME would preference the prescriptive timeframes for audiometric testing are removed or at least qualified as requiring a period of 'accumulated work exposure'.
- That the notification requirement for lead risk work be replaced with a more specific requirement to notify where a person exceeds the blood lead limit.
- The regulations regarding the protection from tobacco smoke are specified not to apply to worker accommodation, and that consideration be given to expressly scoping this out.
- Regulations 60 and 61 of the Model WHS Regulations regarding manual handling tasks be removed, because these risks are covered by general duties. Further, prescription might limit innovation in risk management approaches for these tasks.
- Regulation 42 and 43 of the model WHS regulation expressly not apply to PCBUs in respect of their activities covered by the WHS (Mines) Regulation, to avoid duplication
- A detailed review of DG legislation be conducted to ensure that all unnecessary duplication with the Regulations is removed. The interaction of existing DG legislation and the Regulations should be made clear.

- The defined terms in Part 4.7 (Electrical safety in workplaces and energised electrical work) be aligned with the defined terms in the Electricity (Licensing) Regulations 1991 and that further opportunity should be provided to the mining industry to consult on the drafting to ensure there are no unintended consequences for live work in mining operations.
- The power to suspend authorisations under regulations 110 and 524 be removed, as this is already achieved by the prohibition notice mechanism.
- The definition of 'container' should be limited to dangerous goods with a capacity exceeding 500 litres or net mass of more than 500 kilograms, to provide product hazard information to workers on containers likely to be handled.
- Regulation 306(1) and (2) of the Model WHS Regulations not be adopted in the WHS (General) Regulations on the basis that this issue is better managed in a bespoke manner via a risk based approach.
- Regulation 306(4) of the model WHS regulation as adopted replaces the requirement for a trench to be assessed by a 'geotechnical engineer' to 'geotechnical engineer or competent person'.

In regards to the WHS (Petroleum and Geothermal Energy Operations), CME supports not applying the majority of the WHS (General) Regulations to PGEO and enabling a safety case approach and recommends:

- The term 'near' is defined, and that consideration be given to prescribing criteria to be taken into account such as a specified kilometre distance, ability to physically be impacted and level of interaction with the operation.
- Careful consideration is given to the interaction of the definition of MAE with other sections of the WHS (PGEO) Regulations to ensure duties do not expand to trespassers or persons causing malicious damage. Further duties to the public should be qualified by 'as low as reasonably practicable' or 'as so far as reasonably practicable'.
- HSRs have no specific power to seek a review of a safety case.
- Alignment with the Commonwealth safety case approval timeframes in principle, but would prefer the initial approval to be 60 days rather than 90 days to provide flexibility for scheduling construction.
- Further clarification be provided on the circumstances where a regulator can seek review of a safety case.
- The proposal to include regulation allowing for review of a design case, provided that this remains optional.
- DMIRS clarify what data is to be reported on a quarterly basis, why this data is considered needed, and how the data is intended to be used.
- The definition of 'notifiable incident' for PGEO is aligned with the proposed list and the definition of 'dangerous occurrences' in the Commonwealth offshore petroleum legislation.
- The excluded activities for the purpose of the PGEO Regulations align with the excluded activities for the purpose of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Cth).

Context & Introduction

The Western Australian (WA) resources sector places safety as its highest priority. Recognising that our industry operates in high risk, complex and often remote area, the importance of keeping our people safe and ensuring they return home safe cannot be overstated. The resources sector is recognised as a leader in workplace health and safety (WHS), yet remains resolute its commitment to continuously improve safety and health practices and outcomes. Our sector recognises the important role that WHS legislation plays in providing a clear, outcome-focussed and non-prescriptive framework in which to drive best practice safety.

Currently in WA, mines safety and health legislation the *Mines Safety and Inspection Act 1994* (WA) (MSI Act), is separated from but aligned to general work health and safety (WHS) legislation, being the *Occupational Safety and Health Act 1984* (WA) (OSH Act).

Safety and health legislation in WA has been undergoing reform for a number of years with the broad support of industry. In July 2017, the McGowan Labor Government announced these WHS legislative reforms would be progressed in line with the national model WHS laws administered by Safe Work Australia (SWA) (the Model WHS Law).⁷ All states and territories have now adopted the Model WHS Law, with some jurisdiction specific variations, other than WA and Victoria. Queensland has retained its mines-specific WHS legislation while adopting a version of Model WHS Law for other workplaces.

The McGowan Government's proposed approach is for general, petroleum and resources WHS legislation to be consolidated within a single Act. Acknowledging the unique conditions in WA, the Government committed to developing industry specific regulations to support a single WHS Act to enable the mining sector to continue to use a risk-based approach, and the petroleum and major hazard facility industries to continue to operate under the safety case regime. The WA Government has committed to completing these reforms within their first term.

To facilitate the reform process in WA, in June 2017, Cabinet established the Ministerial Advisory Panel on Work Health and Safety Reform (MAP) to provide the Minister for Mines and Petroleum; Industrial Relations; Energy, the Hon. Bill Johnston MLA (the Minister) with advice on proposed content of the single Work Health and Safety Act for Western Australia (WHS Act (WA)). A consultation package outlining the proposed content of the WHS Act (WA) was released in July 2018 for a period of three months. The Minister has since reviewed feedback and provided proposals to Cabinet and it is expected the WHS Act (WA) will be tabled in Parliament before the end of 2019.

Further to completion of public consultation on the proposed content of the WHS Act (WA), the Commission for Occupational Health and Safety (COSH)'s tripartite Legislative Advisory Committee (LAC) was in 2019 tasked with providing feedback on the finalisation of a Consultation Package with respect the proposed WHS regulations for general workplaces, mining workplaces, and petroleum and geothermal energy operations (PGEO) workplaces:

- WHS (General) Regulations;
- WHS (Mines) Regulations;
- WHS (Petroleum and Geothermal Energy Operations) Regulations,

(collectively, Regulations).

On 26 August 2019, the Department of Mines, Industry Regulation and Safety (DMIRS) released an online suite of consultation materials outlining recommendations for WHS Regulations in WA (Consultation Package).⁸ The Package includes online content summarising the review process and provides the following documents to assist in eliciting stakeholder feedback on the proposals:

⁷ For avoidance of doubt, a reference in this submission to the "Model WHS Law" is to the March 2016 version published by Safe Work Australia, rather than the March 2011 version, unless this is otherwise stated.

⁸ The Consultation Package comprises of: Review Process Summary <https://www.commerce.wa.gov.au/worksafe/review-process-summary-develop-work-health-and-safety-regulations-western-australia>; as well as a suite of documentation (1) Proposed deletions to remove overlap with the Dangerous Goods Safety Act 2004 (WA); (2) National Model Work Health and Safety Regulations; (3) A document outlining differences between the Occupational Safety and Health Regulations 1996 (WA) (OSH Regulations) and the model Work Health and Safety Regulations (15 January 2019 version); (4) Consultation document outlining the proposed Work Health and Safety (Mines) Regulations; and (5) Consultation document outlining the proposed Work Health and Safety (Petroleum and Geothermal) Regulations.

1. A Review Process Summary; Proposed deletions to remove overlap with the Dangerous Goods Safety Act 2004 (WA)
2. National Model Work Health and Safety Regulations
3. A document outlining differences between the Occupational Safety and Health Regulations 1996 (WA) (OSH Regulations) and the model Work Health and Safety Regulations (15 January 2019 version);
4. Consultation document outlining the proposed Work Health and Safety (Mines) Regulations
5. Consultation document outlining the proposed Work Health and Safety (Petroleum and Geothermal) Regulations.

CME has been an active and meaningful participant in the State's WHS reforms process. CME represented the resources sector on MAP and LAC and made a detailed submission as part of the public consultation on the proposed content of the WHS Act (WA).

CME welcomes the opportunity to now provide comment on the proposed Regulations. CME has consistently supported the reform of WHS regulations for the resources industry in Western Australia, to move away from prescription and towards a best practice risk and outcome-based approach. CME has prepared the below detailed submission to outline industry's position on relevant areas of the proposals. The submission initially outlines CME's position on the following overarching aspects:

- Consultation process
- National consistency
- Proposed structure of the Regulations

The submission then provides detailed commentary on what is known about the specific proposed provisions of the three WHS Regulations. Given the volume of content to provide feedback on this, the submission is structured to provide feedback on the three Regulations separately in the following order;

- WHS (Mines) Regulations;
- WHS (General) Regulations;
- WHS (Petroleum and Geothermal Energy Operations) Regulations,

Feedback is sectioned in this way for ease of readability. However, given the overlapping nature of the Regulations, particularly for the WHS (General) and WHS (Mines) Regulations, many of the recommendations between these sections have relevancy to each other, despite being addressed in separate areas of the submission.

The subsequent Appendices provide specific additional feedback on key clauses based on the documents that comprise the Consultation Package:

- Appendix I provides feedback on relevant ways the Model WHS Regulations might be adopted for Western Australia for the WHS (General) Regulations. It also comments on matters raised by the DMIRS Consultation Package document entitled 'Differences between the Occupational Safety and Health Regulations 1996 (WA) (OSH Regulations) and the model Work Health and Safety Regulations', where DMIRS has suggested aspects of the OSH Regulations that may be retained in the WHS (General) Regulations.
- Appendix II provides feedback on relevant ways the National Mines Safety Framework regulations (NMSF) might be adopted for Western Australia's mining and resources sector via the WHS (Mines) Regulations, acknowledging that the Consultation Packages proposes NMSF as the base for the new WHS (Mines) Regulations. Appendix II also comments on matters raised by the Consultation Package document 'Proposal for Work Health and Safety (Mines) Regulations for Western Australia', which contains a comparison table that compares current mining regulation with DMIRS' proposed new approach.
- Appendix III provides feedback on the DMIRS Consultation Package document entitled 'Proposal for Work Health and Safety (Petroleum and Geothermal Energy Operations) Regulations for Western Australia'. At this point, no specific drafting has been proposed for PGEO, so CME's feedback is necessarily high level, and subject to subsequent review of the specific drafting.

Consultation process

Effective consultation is a critical component of regulatory reforms and CME welcomes the opportunity to comment on the Consultation Package for the Regulations.

CME appreciated the opportunity to be involved in pre-consultation through LAC and considers the tripartite process resulted in valuable contributions to the approach to consultation on the Regulations.

It is also acknowledged the Government is working to tight timeframes to progress these reforms, the passage of which was an election commitment. In light of this, CME particularly appreciates the Government accommodating a number of changes to the consultation process on the proposed regulations including:

- The length of this consultation period;
- updates to the Consultation Package (including mock up regulations and explanatory documents); and
- additional consultation sessions with stakeholders coordinated by DMIRS prior to the formal public consultation period.

However, CME wishes to reiterate outstanding concerns with the nature of the current (and planned) consultation on the proposed Regulations.

It is disappointing that the release of the consultation package has not been accompanied and aligned with clarity on the final content of the proposed WHS Act (WA). COSH specifically recommended this occur to provide stakeholders with clarity on the proposals and CME wrote to the Minister in December 2018 requesting this occur.

CME has also made separate repeated requests for clarity on the content of the Bill. CME's August 2018 Submission outlined the importance of considering the package together as a whole (including the proposed WHS Act (WA) and Regulations). Given the Regulations will sit under the WHS Act (WA), CME has consistently held that it was fundamentally important for industry to understand the final terms of the proposed WHS Act (WA) and how it will interact with the proposed Regulations. Just one example of relevant provisions is Part 3 Incident Notification under the WHS Act (WA), which interacts with the subsequent Regulations. There were a number of recommendations in relation to Part 3 that were as part of the consultation process on proposed content of the WHS Act (WA), and yet it remains unclear which of these proposed changes have been adopted further to this process.

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 Law and the Model WHS Regulations for public comment.

The Consultation Package is extensive, totalling over 600 pages, and has significant implications for CME's members. Ensuring stakeholder have a clear understanding of what is being proposed is important to ensure stakeholders can adequately assess implications of the proposed Regulations and provide thorough and meaningful feedback. While CME appreciates updates were made to the Consultation Package, noted above to assist in interpreting the proposals, the detail of a number of elements of the Regulations have not been included in the current consultation. For example, for the WHS (General) Regulations (which are proposed to apply to all workplaces) stakeholder feedback has simply been sought from the Model WHS Regulations. We believe the scope of this request for feedback is inadequate because the Consultation Package outlines a number of areas where the Model WHS Regulations will be varied for WA (for example adoption of aspects of the OSH Regulations, such as those on live electrical work). DMIRS has only provided high level information on these bespoke variations in the Consultation Package.

CME notes that DMIRS' online consultation page also specifically states that updates to the Model WHS Regulations will occur to "include some unique provisions from the Occupational Safety and Health Regulations 1996". This is overly vague and in turn limits stakeholder's ability to assess the impact of the proposed changes.

While CME appreciates the changes made to the Consultation Package at the request of LAC members, stakeholders have still had to work through the significant consultation materials and cross reference explanations in order to determine what is valid, proposed to be amended or removed. This is a substantial task for companies, that necessitated a fulsome preliminary review occur prior to then seeking to review specific detail on the implications of the proposals in the context of their operations. There was in turn a level of ambiguity introduced into this task given the disjointed way in which the explanations were provided and referenced (as mentioned above).

Given this, it is disappointing that the timetable for the implementation of the WHS Act (WA) does not provide an opportunity for further consultation on both Act and the Regulations once they have been drafted by the Parliamentary Counsel's Office, or for information to be released on how stakeholder feedback has been reviewed and incorporated. CME considers that further consultation would improve the ultimate legislative package and avoid any unintended consequences.

CME notes DMIRS has held a number of information sessions on the Regulations. These were welcomed. However, the short notice (scheduled within a week of public consultation commencing) impacted industry's ability to attend - particularly recognising that travel from remote resources sector operations had to be factored in. In this regard, CME's was pleased DMIRS facilitated online access to these sessions. Ensuring industry remain engaged in the process is critical to facilitating effective consultation.

As highlighted in the introduction of this submission, the resources sector places safety as its highest priority. Legislative reforms therefore represent significant undertaking for industry to not only consider and provide feedback on proposed reforms in detail, but to then prepare their businesses and operations to comprehensively implement the requirements of the new legislation to ensure compliance. To give operators the best chance of thoroughly considering and implementing the new Regulations in the timeframe required by the proposed transitional provisions, consideration of the full package is required.

CME supports comprehensive consultation processes, and is concerned that the final content of the proposed WHS Act (WA) and the detail of the proposed Regulations has not been made clear as part of this phase of consultation on the Regulations. Acknowledging this, CME recommends that opportunity be provided for further consultation on the draft Regulations once they have been finalised by the Parliamentary Counsel's Office.

Recognising that the Government is working to tight timeframes to progress these reforms, CME further recommends DMIRS issue a summary of the feedback put forward during the consultation process, and outline how this has resulted in changes to the Regulations, at an absolute minimum.

National consistency

CME has consistently supported the broad principles of harmonisation. CME recognises the benefits for businesses who operate across jurisdictions in dealing with consistent legislation, and acknowledges that the inconsistent adoption and application of model laws in other states impacts our members and their perception of the benefits of harmonisation.

CME has consistently raised concerns (both during this and previous attempts at WHS reform) that adoption of the Model WHS Law in WA, in particular for the resources sector, would require relevant amendments to ensure the legislation is either an improvement on or meets current best practice.

CME considers that is justification to adopt in WA the principles from the model WHS legislation which represent best practice and will in turn achieve positive safety outcomes. Areas where we consider there could be improvement in this regard are detailed in this submission.

As outlined in CME's August 2018 submission, full support for the adoption of the single WHS Act (WA) was contingent on a review of the industry specific regulations.

CME continues to support the Government's single Act reform approach provided the issues identified below are addressed to ensure the legislative package is appropriate to the WA environment.

Proposed structure of WHS regulations

The Minister's announcements on the direction of the current reforms in 2017 stated:

"The Bill will be supported by a number of industry specific regulations to suit the State's unique conditions, enabling the resources sector to continue to use a risk-based approach... Petroleum and major hazard facility industries will continue to operate under a safety case approach"⁹

CME has from the outset been supportive of the Governments single Act reform approach. However, as noted above, this support has always been on the basis that the WHS Act (WA) will be supplemented by industry specific regulation.

⁹ Government of Western Australia, 'New Work Health and Safety Bill to protect workers', Media Statement, Hon Bill Johnston MLA (12 June 2017)

The current Consultation Package proposes Regulations for general workplaces, mining workplaces, and petroleum and geothermal energy workplaces. Currently it is proposed that the WHS (General) Regulations apply to all workplaces including mining. Certain aspects of that regulation also apply to PGEO. There are then further, additional regulations that specifically apply to the mining and PGEO industries. This effectively means that there are two key sources of compliance requirements for each of those industries. For mining, this is a more complex regulatory environment (single Act, two regulations), than the one which currently exists (one Act, one set of regulations).

CME is concerned the proposed structure does not support the objectives of the current reforms to modernise health and safety legislation and reduce prescription, enshrining a risk-based approach for the resources sector.

For the resources sector, this proposed conjunctive approach has the potential to create a more complex and confusing regulatory environment for end users, and will inhibit the mining industry's ability to progress to a truly outcomes based legislative structure (like the petroleum industry) by directly tying them to the general WHS regulations. In addition, this approach further complicates regulatory functions given resource regulators are funded through cost recovery mechanisms.

CME does not support the proposed conjunctive structure of the Regulations (for reasons further outlined below) and recommends separate, standalone regulations instead be developed for mining and PGEO industries relative to other workplaces, mirroring common provisions as required.

Risk based approach

The primary driver for the adoption of revised WHS legislation for the resources sector, and indeed all industry, in WA must be to improve health and safety outcomes.

CME considers the current WHS legislative reforms are an opportunity to implement modern best practice, risk based legislation in WA. Risk based legislation is that which is non-prescriptive, and requires a range of broadly defined duty holders to identify hazards, assess risks arising from those hazards and then implement reasonably practicable control measures. It has long been recognised that a risk based approach drives safety improvement and can accommodate innovative technological change. The resources sector strives to demonstrate maturity in the way it adopts international leading approaches to assess and manage safety risks.

There is a strong body of evidence underlining the effectiveness of risk based approaches such as the safety case model.¹⁰ Dr Andrew Hopkins, an expert on safety in high hazard industries, in 2012¹¹ made the argument that prescriptive regulatory frameworks necessitate that industry regulators effectively determine what is safe or not for an industry. This process is vulnerable to rapid changes in technology and operations meaning that legislation and regulation is constantly 'catching up', a costly exercise for the Regulator which is not in the best interests of health and safety outcomes.

Alternatively, risk based safety case regimes are based on the principle that the legislation sets the broad health and safety goals to be attained and that those responsible for high hazard operations then develop the most appropriate risk based methods of achieving those goals. A basic tenet is the premise that the ongoing management of health and safety is the responsibility of the company and not the regulator.

Over the years DMIRS has articulated its objective for legislation for the resources sector as involving cost savings without reduction in levels of safety, or improvements in safety without increased compliance costs.¹² Achievement of this objective necessarily involves reducing prescription and overlapping regulatory requirements, and enabling industry through legislation to identify and manage risk in the context of what will achieve the best safety outcome for its particular operation.

There are a number of features of the package of proposed WHS legislation for WA that CME considers will improve safety outcomes in this regard. Specifically, CME supports the adoption of:

- The concept of a 'person conducting a business or undertaking' (PCBU), with the primary duty of care being owed to 'workers'. CME considers these principles address concerns with incomplete coverage

¹⁰ Neil Gunningham (2007) Designing OSH standards: process, safety case and best practice, Policy and Practice in Health and Safety, 5:2, 3-24

¹¹ Andrew Hopkins (2012) [Working Paper 87](#) Explaining Safety Cases

¹² See for example comments on DMIRS' objectives in Marsden Jacob Associates, Consultation Regulatory Impact Statement – Work Health and Safety (Resources) Bill (July 2015) p. 32-34.

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 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.
- The requirement for duty holders to 'consult, cooperate and coordinate' works with one another where more than one duty holder owes the same duty, to ensure that where there are overlapping and concurrent duties, there is a mechanism to ensure parties are clear on their responsibilities.

However, CME is concerned at the level of prescription in areas of the Model WHS Regulations and considers this departs from objective to achieve risk based outcomes-focussed regulation. To provide a snapshot, the model WHS Regulations are over 500 pages in length. For the mining industry the WHS (Mines) Regulations will also apply, which equates to an additional 128 pages of regulations. The current *Mines Safety Inspection Regulations 1995* are 386 pages in length. It seems counter-intuitive that in an environment of WHS legislative reform which is aiming to enshrine a modernised, risk based approach that we are moving to a vastly more detailed regulatory landscape.

Examples of unnecessary prescription are further detailed throughout this submission. By way of example, there are a number of prescriptive provisions proposed under the WHS (General) Regulations that duplicate requirements under the proposed WHS (Mines) Regulations. Model WHS Regulation 42 (duty to provide first aid) and WHS Regulations 43 (duty to prepare, maintain and implement emergency plan). The proposed WHS (Mines) Regulations then include a requirement to have an emergency management plan (NMSF M99). The safety outcome sought by these requirements is more than adequately addressed by the requirement on mine operators to maintain a Mines Safety Management System (M24(1)(d)(ii) of the NMSF).

CME considers applying unnecessarily prescriptive WHS (General) Regulations to the mining sector will also limit the industry's ability to transition over time to a truly risk based, outcomes focused management of WHS (such as the independent safety case regime used by the oil and gas industry).

A strong basis of a benchmark safety case regime is a grounding in Duty of Care principles, such that, even if there is no directly applicable standard or code, employers still have a duty under the legislation to manage risk. They must therefore maintain some reasonable level of risk awareness that goes beyond mere compliance. It is the general duty of care that raises a safety case regime above the 'blind compliance' mentality that can characterise overly prescriptive regimes.

Furthermore, there is evidence from within WA that the risk based safety case regime works to improve health and safety outcomes. Since the 1990s, Australia's offshore regulatory regime for safety has adopted a goal-setting regulator approach via a safety case model. In practice, this approach means that duty holders carry the responsibility for identifying and managing safety risks, rather than simply responding to risks pre-identified in regulations. The safety case model, while not diminishing focus on personal safety matters, also ensures adequate attention is placed on the prevention of major accident events (MAEs), ensuring focus in turn is paid to the highest risks.

The offshore oil and gas industry faces a number of similarities with the WA mining industry, such as hazards due to remote locations and working within a complex and often high risk operating equipment. The safety performance of Australia's offshore petroleum industry continues to outperform other comparable industries, domestically and internationally. This is evidenced by NOPSEMA's 2018 annual offshore performance report which demonstrated the highlights in health and safety performance outcomes including no fatalities for the sixth consecutive year, and, a total injury rate of 3.48 per million hours worked, the lowest injury level to date since NOPSEMA (formerly NOPSA) began recording data in 2005.¹³

The mining industry has long identified the safety case regime used in the offshore petroleum sector as representing best practice safety management. The structure proposed for the mining industry under the WHS legislation for WA, whereby the prescriptive WHS (General) Regulations and the WHS (Mines) Regulations apply, will hinder industry's ability to progress over time to a truly risk based, outcomes focussed regime. CME therefore recommends amendments to the proposed structure slightly to provide for one stand-alone set of regulations for each general, mining and PGEO (mirroring relevant provisions from the WHS

¹³ NOPSEMA, 2018, Annual Offshore Performance Report to 31 December 2018, <https://www.nopsema.gov.au/assets/Publications/A674653.pdf>

(General) Regulations across, as required) to enable continuous improvement and evolution of the industry specific regulations over time.

The proposed structure inhibits the mining industry's ability to progress to a truly risk based, outcomes focussed regulatory framework (such as the safety case regime) by forever tying the industry to general regulations. CME recommends the current proposed structure of the three Regulations be amended, to have three separate standalone regulations. Common provisions across the three regulations could simply be mirrored, so that for mining operations for example, there is no need to comply with or refer to any other set of regulations.

Practical workability & 'fit-for-purpose'

CME considers there are a number practical and administrative issues with the proposed structure of the Regulations that will impact on their application and general workability. Robin Stewart-Crompton raised concerns in his review of the operation of the Work Health and Safety Act 2012 (SA) that regulations based on the Model WHS Regulations were not user friendly. Stewart-Crompton proposes this issue can be addressed by:

- Publishing each set of Regulations in multiple volumes.
- Producing a 'user friendly' version of each of the Regulations.

As outlined above, the proposed structure represents a more complex regulatory environment for the mining industry than the one that already exists (being currently one act and one set of regulations). There are many areas of duplication between the Model WHS Regulations and WHS (Mines) Regulations. This creates unnecessary complexity, uncertainty and increases compliance costs without improving safety outcomes. Operators will be required to cross reference and assess two sets of regulations to identify the compliance standard, rather than focussing on one fit-for-purpose document. This also drives inconsistency between mine operators as there is real potential for operators to identify different compliance standards for the same activity.

The resource sector requires fit for purpose regulation due to its industry risk profile and maturity. Given the Model WHS Regulations have been developed generally for industry, some its elements are not fit-for-purpose for the resources sector.

Some key examples where the proposed structure creates practical workability issues and departs from a fit-for-purpose approach include:

- The Model WHS Regulations and the WHS (Mines) Regulations both contain separate notifiable incident provisions, requires mining operators to cross reference these sections, interpret inconsistencies and make assertions as to collectively what is required.
- The Model WHS Regulations and the WHS (Mines) Regulations both contain numerous provisions relating to health and hygiene. For example, r49 of the Model WHS Regulations relates to managing risks from airborne contaminants. This requires PCBU to ensure no person is exposed to a substance over the exposure standard (applying Safe Work Australia exposure standards). This requirement is duplicated at M54 of the NMSF.
- Exposure standards for noise levels are proposed to be enshrined in the WHS (General) Regulations r56, including a peak exposure of 140dB(C). The use of 'C' weighting here is relevant as the mining industry currently instead uses a 'linear' weighting (140dB(lin)) as referenced in the *Mines Safety Inspection Regulations 1994*. The 'linear' weighting enables more accurate measurement of levels in environments of low frequency, such as the mining industry.

It seems counter-intuitive that in a legislative reform process that regulation is proposed to become less fit-for-purpose and streamlined in comparison to the existing usability of the current (standalone) regulations. CME recommends to provide a structure for stand-alone regulations under the modernised WHS legislation, which would allow for issues such as these to be addressed.

For the PGEO industry, while the current proposals represent a reduction in administrative burden relative to the current landscape, standalone regulations would further streamline that regulatory environment and provide an opportunity for it to align to the Commonwealth offshore safety regime for consistency. Further, while for the mining industry, all provisions in both the WHS (General) Regulations and WHS (Mines) Regulations apply, the PGEO industry will have to more closely cross reference between to the two that apply to it, as some parts of the WHS (General) Regulations are not applied to the PGEO industry.

It is also important to note extensive work that will be required – particularly for mining operators - to synthesise and consolidate the regulations ahead of implementation, which creates administrative burden and invites uncertainty and inconsistency interpretation by operators. Creating separate standalone regulations would greatly assist industry in this significant transition.

Moving to a model of standalone regulations would reduce administrative and practical workability issues for both the mining and PGEO industries, and more appropriately support fit-for-purpose regulations.

Specialised regulator

Health and safety regulators should be sufficiently resourced with highly competent personnel to effectively monitor compliance, provide direction and assistance to companies to manage risks and support continuous improvement efforts.

CME has consistently expressed support for the maintenance of separate inspectorates within DMIRS for resources and general industry to enable each to possess the specialist skills required to regulate occupational safety and health in their respective sectors. Different skills and experience are required and should be valued in this regard, due to the fundamentally different hazards and risk profiles associated with the mining, oil and gas and pipeline industries (the resources sector) as opposed to general industry. For example, in the mining industry it is essential to retain specialist inspectors with geotechnical expertise.

The importance of the retention of specialist skills within regulators has consistency been recognised. For example:

- the *2003 National Mine Safety Framework Implementation Plan Discussion Paper* made recommendations in support of a professional and technically competent mines inspectorate with appropriate industry experience and qualifications¹⁴;
- The *Third Audit of the Mine Safety Unit and Office of Chief Inspector of Mines in Tasmania (2014)* championed the historical specialisation of inspectors in Queensland. The report emphasised that a high level of expertise of mines inspectors was critical to allow them to identify and resolve concerns that may have otherwise led to serious accidents¹⁵;
- one of the key findings into the Pike River Coal Mine tragedy in 2010 was that an underlying cause of the accident was the 'inadequately resourced and skilled inspectorate'¹⁶.

To facilitate a skilled inspectorate for the mining sector in WA, a Mines Safety Levy (Levy) cost recovery framework was implemented in April 2010. The Levy enables the Mines Safety Branch within DMIRS to employ and train a dedicated inspectorate with mining industry skills specific who are focused on both compliance and education activities to lift standards across the industry.

While CME does not generally support the principle of cost recovery for the functions and operation of government, industry accepts cost recovery within DMIRS is important to ensure a high level of safety and health standards across industry, and to promote proactive compliance through support of a dedicated and highly skilled and competency regulator.

The Levy is based on the number of hours worked by workers on a mining operation. To ensure that Levy funds are used only for mines safety activities, the monies are held in a special purpose account. The special purpose account is presently linked to DMIRS' functions in administering the MSI Act and its regulations. This account must comply with the accounting and reporting requirements of the *Financial Management Act 2006* (WA), and is subject to audit scrutiny.

CME has consistently advocated on the importance of transparency with respect to collection and distribution of Levy funds. It is unclear what the implications of the proposed WHS legislation structure is for the way in which the Mines Safety Levy is used. The expectation of the mining industry is that a specialist inspectorate remains, given that regulator is funded through a cost recovery mechanism.

If regulatory resources are pooled and shared between general industry and mining this would compromise the integrity of the application of levy funds. There also presents uncertainty for DMIRS in which of its functions

14 Conference of the Chief Inspectors of Mines, National Mine Safety Framework Implementation Plan, Discussion Paper, October 2003, http://www.ga.gov.au/image_cache/GA2663.pdf

15 Michael Quinlan, Third Audit of the Mine Safety Unit and Office of Chief Inspector of Mines, Worksafe Tasmania, April 2014, http://worksafe.tas.gov.au/_data/assets/pdf_file/0008/288845/Quinlan_Report_2014.pdf

16 Government of New Zealand, Royal Commission on the Pike River Coal Mine Tragedy, 2012, [http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-Two/\\$file/ReportVol2-whole.pdf](http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-Two/$file/ReportVol2-whole.pdf)

can be supported by the levy, given the overlap in the regulations. There would also likely be consequent administration costs and reinforcing internal cost controls required to provide assurance in relation to how levy is applied. Separate regulations for mining would assist to ensure the levy is properly applied, and would reduce DMIRS' compliance costs in applying the levy.

Separate inspectorates doesn't prevent inspectors from having training in other areas to expand their skill sets. It is appropriate for inspectorate-wide training and exposure to apply in certain areas to ensure consistency of approach. For example, inspectors should share an understanding about the scope of their powers and be consistent in the way they conduct investigations and collect evidence.

It is critical that a dedicated, competent and well-resourced inspectorate is maintained to support compliance and the implementation of best practice risk based approaches and continuous improvement efforts in health and safety outcomes.

CME strongly supports maintenance of separate inspectorates for mining and petroleum sectors (within DMIRS) with the specialised skills and experience needed to appropriately administer and deliver improvement in the relevant Regulations. CME considers separate regulations will support this outcome, and provide clarity and transparency in regards to use of cost recovery mechanism funds.

WHS (Mines) Regulations

The below section of the submission deals with specific issues relating the WHS (Mines) Regulations.

Definition of mining operation

CME understands the intent of the 'mining operation' definition is to mirror the scope of the MSI Act, and to clarify some specific activities. As drafted, CME considers that it does not achieve this objective. We have outlined some key issues below.

Offsite activities

While CME understands from the DMIRS information sessions that it is intended that Remote Operations Centres (ROCs) will not fall within the scope of the WHS (Mines) Regulations, it is important that this is clear to avoid any unintended consequences.

Regulation M8(2) defines a 'mining operation' as "an activity carried out for the purpose of any of the following" and then goes on to specify exploration, extraction, processing and handling or transporting minerals. Whilst CME agrees that defining mining operations by reference to 'primary activities' makes sense, defining it by reference to activities carried out for those purposes as proposed by NMSF M8(2) and NMSF 8(3)(b) would significantly expand the definition. It could be argued that administration and other support activities undertaken at an office in Perth, including a ROC, are being undertaken "for the purpose of" the primary activities albeit that they are remote from those primary activities. CME considers this is not the intent of the proposal.

Including ROCs in the WHS (Mining) Regulations would have the potential to create significant impracticalities and confusion for industry. CME considers it is unnecessary for the WHS (Mining) Regulations to apply to ROCs given all decisions that impact a mine are part of the overall safety management for that mine. Therefore, specific consideration of ROCs in the WHS (Mining) Regulations would create confusion as to how other functions that are separate, but related to the mine, for example corporate offices based in Perth, are considered. Further, ROCs may be physically based in other jurisdictions and therefore addressed under separate legislation.

It should also be noted that although the WA mining industry is one of the most advanced in the area of ROCs, there will likely be an increase in the use of automation (and associated ROCs) across other industries into the future - for example, the transport industry. It is expected ROCs would fall under WHS (General) regulations further supporting the need for mining ROCs to be considered in this way.

CME is supportive of an approach where personnel working within the ROC are covered within the WHS (General) Regulations.

Changes are required to clarify that particularly ROCs, and decisions made by people at ROCs, will not fall within the scope of the WHS (Mines) Regulations, and the definition of 'mine' and 'mining' operation. It would therefore be helpful to clarify that it is the primary activity itself which constitutes 'mining operations' and that

the place where that activity is undertaken is the 'mine site'. This is similar to how this is dealt with in the definition of 'mining operations' in the MSI Act.

Further clarity is required on how the following will be managed:

- Decisions made within the ROC that relate to activities occurring on a mining lease (e.g. changes to dust suppression sprays, and operating and turning on and off machinery).
- Whether the Site Senior Executive (SSE) and other statutory appointments under the WHS (Mines) Regulations will have any accountability over the ROC, and decisions taken at the ROC.

In considering how ROCs should be addressed in the legislation, CME understands that DMIRS has sought to understand the relationship between site duty holders under the WHS (Mines) Regulations, and the extent to which positions such as the SSE are responsible for procedures that occur at ROCs.

Currently, Registered Managers have limited duties with respect to ROCs, on the basis that they have limited control over the operations at a ROC. The reporting structures within ROCs typically exist within more complex corporate structures as compared to individual mines sites. For example, ROC roles often interface with multiple mine sites but report to management at the ROC.

Given this operational context, CME considers the WHS (Mines) Regulations should be clear that SSEs do not assume responsibility for the activities at the ROC. This would not be practical given the nature and scope of responsibilities of ROCs.

In turn, the mine operator (and any other relevant PCBU) and the SSE will need to ensure that they have sufficient oversight of the manner in which plant or equipment is remotely operated to discharge their health and safety duties on site. For example, there should be daily discussions between the mine site and the control centre to discuss the planned activities, and SSEs should review relevant procedures such as fitness for work of control centre personnel.

It should separately be clarified that no person physically sitting in a control room would need to be statutorily appointed. (Note, additional commentary on statutory positions is outlined below).

Further clarity be provided on how the Regulations will apply to Remote Operations Centres and other offsite management functions. Consideration should be given to expressly scoping these activities out, if a broad purpose based definition is retained.

Note, additional commentary with respect to the definitions regarding the 'operation of autonomous plant' is outlined below.

Fixtures

NMSF M4 provides that the mining regulations apply to all 'mines', and NMSF M7(1) defines a mine as "a place at which mining operations are carried out and it includes any fixture, fitting, plant or structure at the place". Whilst the MSI Act defines 'mine' by reference to 'mining operations', it does not go on to deem any fixture, fitting, plant or structure at the place to be part of the mine. CME considers this extension creates uncertainty as to how any fixture, fitting, plant or structure at the place that is on a mining operation but has nothing to do with mining will be regulated. For example, plant associated with pastoral activities.

CME recommends DMIRS clarify that fixtures, fittings, plants and structures at the place are only regulated by the WHS (Mines) Regulations to the extent that they are associated with mining.

Excluded matters

Some activities which are included under the MSI Act are not included in Regulation M8(3). For example, smelting and refining, and operation of remote borefields.

CME recommends DMIRS clarify whether smelting and refining, and operation of remote borefields are intended to be regulated as a 'mining operation' under the WHS (Mines) Regulations.

Air strips

Regulation M8(4) specifies a number of activities which are deemed not to be 'mining operations'. One of those is "air travel to or from a mine". It is not clear whether this exclusion is intended to only cover operation of the aircraft or whether it would also include the airstrip at the mine site and associated facilities.

CME recommends DMIRS clarify whether the airstrip at the mine site and associated facilities will be regulated as a 'mining operation' under the WHS (Mines) Regulations.

In the vicinity of

Further clarity is also required on the meaning of “in the vicinity of” the mine, and what this is intended to capture. In particular, it is not clear what proximity test would apply and whether this would capture both physical and virtual proximity to the mine.

CME recommends further clarity be provided on what is ‘in the vicinity of’ the mine.

Instruments of declaration

Further clarity is required on how or whether DMIRS intends to transition over existing instruments of declaration carving certain operations out of the MSI Act jurisdiction. These instruments are gazetted under s4(3) of the OSH Act. CME supports an approach where operators are provided with the option for their instrument to be transitioned, if desired.

CME recommends further clarity be provided on whether DMIRS intends to transition over existing instruments of declaration which carve certain operations out of the MSI Act jurisdiction. CME supports an approach of this nature.

Definition of mine operator

CME is supportive of the note on the NMSF in the Consultation Package to the effect that the status quo is maintained by not adopting NMSF Drafting Instructions (DI), which recommends two separate roles of ‘mine holder’ and ‘mine operator’.

However, the mine operator definition also requires clarification. It is not clear whether they capture unincorporated joint ventures, which are common in the WA mining industry.

CME recommends DMIRS clarify whether unincorporated joint ventures fall within the definition of ‘mine operator’ and if so, allow the JV Manager to be the ‘mine operator’ on behalf of the JV participants.

Definition of Operation of autonomous plant

Duties relating to ROCs and definition of ‘autonomous’ is outlined under proposed NMSF M42. Should this provision remain, it is important that appropriate terminology is chosen to describe this complex area, and to ensure that it is flexible enough to capture its rapidly evolving nature.

CME member feedback has indicated it would be useful to amend some terminology to more appropriately capture the spectrum of remote controlled plant/equipment and autonomous plant/equipment. There is a vast spectrum of terminology associated with remote and autonomous operations. These can be broadly separated into the below groups.

- Remote controlled plant/equipment: when controlled by someone in a remote location – whether onsite or further away in an offsite ROC for example.
- Semi-autonomous plant/equipment: when there is a mixture of remote and autonomous control.
- Autonomous/Automated plant/equipment: when the built in control system is controlling the plant/equipment (noting that software updates may be remotely applied from out of the jurisdiction, including internationally).

The above list should not be interpreted as fixed categories. There are further grades within the above spectrum, including portable remote control, line of sight remote control and station remote control.

- Onsite versus offsite monitoring and control. Regulations on remote activities should be made consistent with the legislative intention on whether these activities are considered part of a ‘mining operation’ regulated by the WHS (Mines) Regulations.
- Automation of mobile plant (i.e. equipment) and fixed plant.

There is also ambiguity about what is meant by “a person that controls the operation of autonomous plant” in NMSF 42(2). CME expects this has been drafted to apply to autonomous and remote controlled plant generally. However having regard to the points above, this is likely to be interpreted as semi-autonomous plant (which has a mixture of remote and autonomous control).

Recommendation: That the WHS (Mines) Regulations use consistent terminology for remote and autonomous plant and equipment that is sufficiently broad to cover different grades of automation, including those without a human operator, and that is flexible enough to allow for the rapidly changing nature of this equipment.

Statutory Positions

Training and experience requirements

CME is concerned that the prescriptive requirements imposed on statutory role holders will not adequately reflect competencies. In particular, prescriptive requirements in relation to experience are unnecessarily restrictive and are inconsistent with the intention of removing prescription.

CME is aware of the findings of the reviews into fatalities which occurred between 2000 and 2012 conducted by DMIRS (then DMP) which demonstrate that *“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.”*¹⁷ However, it is not clear that 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 whether the proposed requirements will apply to 'step-up' or relief supervisors (i.e. those acting temporarily in the role of supervisor).

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

CME is concerned that the prescriptive 'experience' requirements for statutory function holders in Schedule 8 of the National Mines Safety Framework (NMSF) do not appropriately promote or ensure the required competencies. It is important to ensure statutory function holders are competent to hold the position – years of experience is relevant here, but not determinative. Further, the currency of experience should also be considered. These matters require further consideration and clarity in the context of assuring competent supervision. For example, the proposed 2 years' experience requirement for the Site Senior Executive of the NMSF / Schedule 8 may send an inaccurate message on the skill and experience required to properly perform this position. Given the significance of this position it is likely far more years of experience is required.

It would be preferable to remove this prescription and provide that the statutory appointee should have the competencies as determined by the SSE, insofar as:

- Ensuring that the officer has the relevant competencies is more likely to achieve better health and safety outcomes.
- Some individuals may have spent time in a particular role or at a particular operation, but may not necessarily be competent. For example, they might have taken a length career break and have lost touch with current technology and practices.
- Length and nature of experience as the benchmark may drive 'tick box' outcomes.

It is not clear from the Consultation Package 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 recommends the prescriptive experience requirements be removed from the WHS (Mines) Regulations and replaced with a general competency requirement, with the competency framework forming a part of the Mine Safety Management System.

CME notes all statutory roles are required to complete “a recognised health and safety risk management course” (NMSF Schedule 8). This has the potential to carry significant compliance costs and create an administrative burden, in the absence of actually improving the competency of statutory positions holders. For example, a large number of existing statutory position holders / supervisors in the industry have completed internal courses only or other external (potentially un-approved) courses which are appropriate for their position. These types of training courses cover site specific information and are therefore more fit-for-purpose and effective than generalised courses. They also include general risk management modules.

While CME is supportive of the intent, it is concerned that 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 after being appointed to the role (as is currently in place for Health and Safety Representatives (HSRs)). A grace period of one year

¹⁷ 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

would be realistic, particularly for those in the supervisor role, which might capture thousands of roles in a large company (particularly if all those who might act up as supervisor are required to complete this training).

Organisations should have the flexibility to provide 'in-house' training that is tailored to the relevant operating environment of the organisation. Companies currently have highly developed risk management training programs for all workers, with additional training for supervisors, statutory positions and senior management. Risk management training is often a key tenet of organisational culture. Companies are reluctant to shift from these tailored programs. Any approach introduced by DMIRS would need to avoid undermining existing approaches.

Many large operators are accredited training providers which have the resources to support this kind of training for their employees and potentially also contractor employees. This approach would potentially also have an improved safety outcome as trainers would be equipped with background on the site's unique features, and could contextualise the training.

It is acknowledged that moving to a more risk based legislative framework relevantly requires skill in risk management principles, however CME does not support prescribing a 'one size fits all' training courses for industry. CME has previously undertaken consultation with industry to ensure risk management training requirements are effective in skilling individuals in this area.

This process indicated industry was supportive of DMIRS setting a standard for risk management training that companies could be audited against, as opposed to mandating a specific course given:

- There is extensive risk management training already occurring across the industry;
- It is considered difficult to achieve behavioural change through a knowledge based short course;
- For training to be effective its needs to be contextualised for each organisation and job;
- Presents the risk that a mandated introductory course could result in some companies/contractors reducing training efforts as they have met requirements;

It is acknowledged there will be a subset of industry not in a position to provide their own training and availability of external courses, that align to the above discussed standard, and hence allowing flexibility will be important in this regard.

CME recommends that further consultation be undertaken with industry to ensure any training in this area effectively improves competency and, in turn, measurable improvement in health and safety outcomes. Industry does not support mandating specific training courses, but is supportive of establishing a standard that companies could be audited against, or could elect to complete. This approach would offer a number of benefits, such as:

- Providing risk management training for organisations and individuals that have not had the capacity to invest in training.
- Ensuring that all workers in the industry had completed a minimum level of risk management training.
- Establishing a benchmark for the industry, encouraging greater standardization and shared understanding of basic risk management concepts.
- Ensuring consistency with the new legislative risk-based management approach.

Industry does not support mandating specific risk management training courses given the variety and maturity of training already in place across industry. CME instead recommends Schedule 8 be amended to require individuals to have "successfully completed *appropriate* health and safety risk management *training*", and that further consultation occur between DMIRS and industry to ensure that training standards are designed to practically lift competency and, importantly, measurable improvement in health and safety outcomes.

Site Senior Executives (SSE)

The WHS (Mining) Regulations propose that every mine will need to appoint an SSE. CME understands that the intention is for the SSE role to closely replicate the role of 'Registered Manager' under the MSI Act.

CME supports the removal of the requirement for an SSE to be physically present at a mine on a daily basis. This is something CME has raised in submissions in previous reform processes. In an environment where technology allows reliable communication between geographically dispersed places and to ensure

regulations remain fit for purpose as technology improves, CME considers it is unnecessary to prescribe that daily presence at site is required.

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. This would be beneficial in circumstances where risks to health and safety will not be increased by allowing an SSE to be responsible for a wider area.

It is unclear from the Consultation Package whether the WHS (Mines) Regulations will allow a mine operator to take a risk based approach to the appointment of an SSE for more than one operation. In particular, further clarity is required on the standard for the requirement of the SSE to be 'readily available' (NMSF M135(2)).

CME recommends the WHS (Mines) Regulations allow a mine operator to take a risk based approach to assessing the area over which an SSE will have responsibility, and clarify the meaning of the requirement that the SSE be 'readily available'.

A related concern on the remit of the SSE role is that amendments are required to ensure that SSEs are not responsible for day to day WHS issues at the ROC, except as they pertain to health and safety matters on site. This is on the basis that SSEs would have limited practical control over many tasks performed at a ROCs. As previously stated, primary responsibility for risk management at the ROC is better allocated to a person based at that workplace.

CME recommends the WHS (Mines) Regulations clarify the responsibilities of SSEs in respect of ROCs.

Definition of supervisor

It is not clear which supervisory roles will be captured as statutory function holders, and how these will compare with the existing s 44 appointments under the MSI Act. DMIRS has indicated that statutory function holders are intended to capture everyone allocated to supervising and delegating work. Further, a person can have more than one supervisor under NMSF M6. This captures a broad category of individuals.

CME is concerned 'supervisor' may be defined too broadly – for example to cover: regional managers (who are not site based); ROC controllers and supervisors; site-based supervisor and team leaders; and 'step-up' or relief supervisors. There are multiple scenarios where there may be coordinator roles or site services personnel managing works that may or may not be limited to the administration offices. It is also unclear whether, while a person might have multiple supervisors, whether the intention is that they only have one supervisor per task.

As drafted, this would require a very large number and high percentage of persons on site to pass an examination to perform their role. This would increase cost and the regulatory compliance burden, and may make talent acquisition and succession planning difficult. Further, it may be an administrative burden for the SSE, who has exclusive authority to make statutory appointments.

It would be preferable to confine the statutory role to those appointed to support the SSE by the SSE.

Allowing the SSE to determine the number of people who need to hold the supervisor statutory role is consistent with a risk based regulatory approach, and will ensure there is no confusion as to who needs to be trained and who holds the accountabilities of the statutory role.

CME recommends the supervisor statutory role is confined to those appointed by the SSE to support the SSE.

Supervisor - alternative and vacant roles

CME supports the removal of prescriptive requirements for appointing alternates and deputies to fill prescribed roles. However, some detail is required on the way acting positions and arrangements for filling vacancies will be managed via the MSMS to meet the requirement for statutory function holders to be 'readily available' (NMSF 138(4)). In particular there needs provide flexibility to allow for commute schedules and supervision across multiple mine operations.

Should the proposed requirements apply to acting roles this could hinder professional development opportunities and labour supply. Further definition and detail is required. Requiring all supervisors to complete training and appointment requirements limits exposure opportunities for career progression for those who are working toward a supervisor role.

The WHS (Mines) Regulations should clarify whether training requirements also apply to acting supervisors, for example when covering annual leave. CME recommends there be flexibility in requirements for vacant and alternate statutory function holders to allow for commute schedules and, based on a risk based approach, a mine operator setting the SSE's geographical area of responsibility.

Supervisor - shift handover

NMSF M36 contains a requirement for supervisors to provide a written report to their counterpart at shift changeover in relation to the state of the mine, workings and plant and any other matters that relate to work health and safety, and that the incoming supervisor communicate this to workers.

The requirement that the report be in writing and contain prescribed content is inflexible and does not account for varying shift changeover procedures that are in place to manage remote work and commute schedules. In an environment where technology allows reliable communication between two places, and to ensure the Regulations remain fit for purpose as site systems technology improves, it is unnecessary to prescribe handover formats.

Any requirement for shift handover should focus on ensuring communication, rather than prescribing content or format.

NMSF M142(2)(f) requires the mine record to contain the shift handover information obtained pursuant to NMSF M36. CME considers that the mine record is not the appropriate location for the storage of shift handover information. Handover communications are part of standard operational management, as opposed to an incident or appointment, and it will be a large administrative task to maintain these as a part of the mine record, given their volume.

It is also unclear to which workgroups this is proposed to apply to. As currently drafted it has the potential to apply broadly to for example include support teams such as HR, IT and HSE, or 'services' teams such as facilities maintenance, travel/accommodation.

Given the associated administrative burden created by this prescriptive requirement, CME recommends shift handover information not form part of the mine record.

Risk management

Mines Safety Management System (MSMS)

Multi-site MSMS

The Consultation Package outlines that the WHS (Mines) Regulations will require a mine operator to develop, maintain and implement an MSMS and a contractor must operate under the MSMS or under their own developed MSMS approved by the mine operator.

We understand that DMIRS' intention is that companies can develop a single MSMS for multiple sites. CME strongly supports this outcome, however little detail has been provided on how this will be reflected in the Regulations. This should be clarified.

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. It is also important for the MSMS to have a functionality that allows it to process location specific information, and account for required variations to meet unique site requirements.

If the requirement to have an MSMS is expressed as being specific to each mine, it could be interpreted in a way which results in decentralisation. This is likely to impact negatively on health and safety if confusion arises as to which parts of an MSMS are relevant where the MSMS is decentralised and site specific. Conversely, there needs to be flexibility to implement a central MSMS, but allow for site-based variations.

CME strongly supports the flexibility to develop a single MSMS for multiple site. Clarity should be provided that all elements of an MSMS should be able to be applied across operations, and the decision to vary any particular element for a given site should be the mine operator's to make.

Contractor safety management

CME understands that it is intended that the regulations will provide flexibility to either have a contractor operate under its own health and safety management plan or under the mine operator's MSMS. CME would strongly support this outcome, being consistent with a risk based approach. However, the NMSF does not appear to reflect this flexibility. Rather, it seems to always require a contractor to produce its own plan, even where they are only contracted for a low risk scope of work. CME recommends against this aspect of the NMSF being adopted as it would introduce unnecessary duplication and confusion, which could result in negative safety outcomes.

CME has concerns about the practical outcome of the second sentence in M23(1) (that a PCBU's MSMS includes any contractor's management system), read with clause 9.21 of the NMSF drafting instructions, which states:

“the Mine Operator’s Work Health and Safety Management System (revised to incorporate the Contractor Health and Safety Work Plan in accordance with 9.19) is the work health and safety management system that will apply to the mining operations and which must be complied with by all workers at the mine (including the Contractor and workers of the contractor).”

If a PCBU has multiple contractor systems incorporated into its MSMS, and then that needs to be complied with by all workers at the mine, this may require workers to navigate and comply with duplicated and potentially inconsistent requirements. The requirement on a contractor to always maintain their own management system would also be burdensome, particularly if a contractor works across industries where it may not be practicable to have one contractor management system addressing the MSMS for all the mines they service.

The WHS (Mines) Regulations should provide flexibility for a contractor to develop their own MSMS, at the mine operator’s discretion, or work under the mine operator’s MSMS, with primacy given to upholding a consistent risk based approach.

M32 states “the contractor must have obtained written notice from the mine operator that the mine operator has reviewed the plan and is of the opinion that the plan is consistent with the mine safety management system for the mine”. Further clarity is required to make it clear that the mine operator does not need to approve a contractor’s MSMS. This could potentially remove control and dilute responsibility from the person performing the activities who is best placed to manage the risks associated with the activities they have been engaged to perform.

CME recommends the requirements around reviewing a contractor’s MSMS be clarified, particularly to account for the situation where contractors are undertaking specialist tasks which are outside the expertise of the mine operator. CME recommends that the mine operator should not be required to approve the contractor’s work methodology, and that it be clarified that the contractor remains responsible for its safety management system.

Review triggers

M27 of the NMSF requires a mine operator to ensure its MSMS is reviewed every three years and “as necessary to ensure it remains effective.” M27(2) requires the MSMS to be revised where a control measure is revised. Further clarity is required on the trigger for a review of the MSMS in the contractor context. For example, CME is concerned that these provisions have the potential to trigger review of the MSMS every time a mine operator changes out its contractor. A review may not be required in any instances, such as if an incoming contractor proposes to work under the same MSMS as the incumbent contractor, for the same scope of work.

Clarity should be provided on whether changing out contractors necessitates a review of a mine operator’s MSMS.

Consultation

M27A of NMSF outlines a requirement to consult with workers on development, implementation and review of MSMS, identifying hazards and conducting risk assessments for principal hazards and preparing, testing and reviewing the emergency management plan

Clarity is needed on the meaning of ‘consultation’ so workers’ views are taken into account, but not without the ‘agreement’ of workers or the need to achieve the ‘consensus’ of workers (or their representatives).

There is also a need for clarity on (i) how consultation applies in the context of an MSMS developed centrally and; (ii) whether every amendment to the MSMS needs to be the subject of consultation (not practicable).

It is important 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.

Alternate drafting is recommended as follows, ‘For the purposes of section 49(f) of the Act, the mine operator of a mine must take reasonable steps to consult with workers at the mine in relation to the following...’

The consultation requirement connected with the development, implementation and review of MSMS needs to be clarified, or qualified by an obligation to take reasonable steps.

Management plan versus management system

It would also be helpful to clarify whether there intended to be any distinction between the concept of a health and safety “management plan” vs a “management system”. These different terms appear throughout the WHS (Mines) Regulations and in most cases seem interchangeable.

Other issues

CME considers that further clarity is required from DMIRS to confirm that:

- Mining operators are only required to have an MSMS in place to the extent their operations are ‘mines’ within the meaning of M7, and not for other operations that they coordinate.
- That the ‘Work Health and Safety Management System’ referred to in the NMSF is interchangeable with the MSMS.

Principal Hazard Management Plan (PHMP)

It is proposed that a number of principal hazards will be prescribed for the purposes of PHMPs, as matters the mine operator must have regard to. Prescribing principal hazards is inconsistent with the risk-based approach taken in the legislation in a number of other areas.

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. Insofar as guidance is preferable for a confined group (ie small operators) this should be dealt with in DMIRS guidance material.

M37-M40 of NMSF contains specific regulation on each of the hazards associated with mobile plant, inrush and inundation, geotechnical instability and quarry operations. While principal hazards are covered in PMPs, some of these may not be applicable to particular mines, these hazards must be dealt with by applying general risk management principles given in Model WHS Regulations Part 3.1. These regulations highlight these requirements and provide the summary of the hazards/factors that must be considered by the mine operator in dealing with these specific areas. This is a missed opportunity to move to a risk based approach in line with the objective of these reforms.

A risk based approach is preferable by using terminology to the effect of that used in M33(1) and M10(vi) which require a mine operator to identify (as a principal mining hazard) “any other hazard” which “has a reasonable potential to result in multiple deaths in a single incident or a series of recurring incidents”.] This would encourage the identification and management of more principal hazards than would be covered by following a prescribed approach.

CME recommends a risk-based approach to hazard identification for the PHMP is adopted, with no prescribed principal hazards. 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.

Notifications

M43 and Schedule 2 of NMSF stipulates the regulator must be given prior notice of specified high risk activities. Schedule 2 provides the list of these activities, required notice period and details to be provided in the notice.

The requirement to notify a ‘major change’ with autonomous and semi-autonomous equipment overlaps with requirement to notify a ‘substantial change’ in M14 of the NSMF. It is unnecessary and administratively burdensome to have both of these notification provisions apply to remote or autonomous operations (or if they are intended to be different, that distinction should be clearly articulated).

CME recommends either:

- (a) the reporting requirements for major change (M43, Schedule 2 of the NMSF) and substantial change (M14) to autonomous and semi-autonomous plant be distinguished; or
- (b) that one requirement be removed; or
- (c) that M43 cross-refers a person back to the notification obligation in M14.

It would be helpful if these provisions could be clarified to expressly not apply the notification requirement to software or hardware upgrades to autonomous and semi-autonomous equipment if the intent of the operation is not fundamentally changed.

Software or hardware upgrades that do not fundamentally change the operation of autonomous and semi-autonomous equipment and therefore should be excluded from change notification requirements.

Fatigue and consumption

NSMF requires the mine operator to manage health and safety risks associated with worker fatigue and the consumption and use of alcohol and drugs by workers.

Risk management requirements should be qualified by 'so far as is reasonably practicable', and confined to matters within the control of the mine operator. As drafted, it arguably applies a higher standard on the mine operator to manage all risk, which is unachievable, unnecessarily punitive, and underplays the role of personal autonomy in the management of risk.

CME recommends the requirement to manage worker fatigue and alcohol and drug consumption be qualified to so far as reasonably practicable, and confined to matters in the mine operator's control.

Health and Safety Representative (HSR) ability to review of control measures

A mine operator must ensure that a control measure that is the subject of a request by HSR under WHS Regulation 38(4) (asbestos) is reviewed and revised as necessary. There is no equivalent requirement in the *Mines Safety and Inspection Regulations 1995 (WA)* (MSI Regulations).

This change would seem to excessively expand HSR powers, could create an ongoing review burden for business and does not justify how it may add value to health and safety outcomes. Furthermore, this assumes a high level of competency within HSRs to assess effectiveness and/or adequacy of control measures, unreasonably beyond typical HSR training. HSRs may not be sufficiently qualified to request a review control measures in an informed way. This measure exposes businesses to a requirement to consider and respond to uninformed input, which may create undue administrative burden without the prospect of improved safety outcomes.

Companies in the resources sector invest significantly in creating safety cultures where any member of their workforce feels safe to speak up if they have concerns about safety and health matters. This extends to health matters.

Furthermore, risk assessment and control review practices are critical to continuous improvement in health and safety management and outcomes in the resources sector. It is fundamentally important that appropriate skilled and trained personnel are nominated to undertake this review work, and that specialist functions and roles are not diluted away from material risk and critical control owners and specialists. A 5-day HSR training course will not provide a sufficient expertise of all necessary management systems and specialist control measures.

For example, asbestos control plans are technical in nature. HSR's will typically not possess the sufficient skills or qualifications to undertake these duties.

Additionally, Part 3.1, 38 provides HSR with the ability to review control measures in general so additional wording for this clause here is not necessary. HSR's are and will continue to be consulted through existing structures for feedback on any new plans or revised plans. This therefore renders this regulation redundant.

There should be no entitlement for a HSR to seek review of an asbestos control measure in the WHS (Mines) Regulations.

Health and Hygiene

Structural issues

The proposed provisions on health and hygiene monitoring are an example of where PCBU's that operate in the mining industry would need to cross-refer between the WHS (General) Regulations and WHS (Mines) Regulations to understand the compliance standard. Mining operators would benefit greatly from only having one set of applicable regulations that mirrors that which applies to general industry. Further specific commentary on the health and hygiene sections contained in the WHS (General) Regulations is provided below.

Air quality and monitoring

M53-M57 of NMSF relates to air quality and monitoring at mines. This references the exposure standards for inhalable and respirable dust directly. This is an example of duplication with regulation 49 in the WHS (General) Regulations, which deals with managing risks from airborne contaminants. This requires PCBU to ensure no person is exposed to a substance over the exposure standard (the user then applies exposure standards referenced in the Safe Work Australia (SWA) document).

While the levels outlined in the NMSF currently align to the SWA reference document, SWA is currently reviewing these. If the SWA standards do change, this may present a situation whereby conflicting values are referenced under the mining and general industry regulations. This is obviously problematic.

If CME's proposal for separate, standalone WHS (Mines) Regulations is not adopted, the exposure standards in the WHS (Mines) Regulation apply to mining operations to the extent of any inconsistency with the WHS (General) Regulations.

Air quality and ventilation

M88 includes a requirement to monitor air quality, unless a person is wearing a self-contained breathing apparatus (SCBA), if the mine operator is "not certain on reasonable grounds that M87 is being complied with". Given M87 links to ensuring dust levels don't exceed M54 (exposure standards), the practical application carries the potential to require air sampling in a significant amount of circumstances. Effectively this requirement is quite broad ranging.

CME appreciates that the intent of this provision is to not to put workers in an area unless the PCBU can be certain about the exposure risk. However, CME considers this should occur only in high risk situations where there is an acute risk to workers health - for example after blasting. One way to achieve this would be to confine the requirement to high risk mining activities as defined by NMSF M43 and Schedule 2. This approach is consistent with the objective of achieving an outcomes focussed regulatory framework, whilst balancing regulatory burden.

Consideration should be given to confining M88 to only require air monitoring for high risk mining activities as defined by NMSF M43 and Schedule 2.

M89 states that, following an exceedance, re-testing must be completed by a "competent person". This appears to be the only place where competency for atmospheric/airborne contaminant monitoring is mentioned and creates confusion as to what is being referred to. The requirements and

CME recommends "competent person" within the context of M89 be clarified or removed.

M90 requires air monitoring records under this chapter to be kept for 7 years. This directly contradicts the WHS (General) Regulations which state that air monitoring records need to be kept for 30 years.

If CME's proposal for separate, standalone WHS (Mines) Regulations is not adopted, CME recommends the timeframes in relation to air monitoring records in the WHS (Mines) Regulation apply to mining operations to the extent of any inconsistency with the WHS (General) Regulations.

Radiation

Currently in WA, the legislative requirements applicable to mining operations where Naturally Occurring Radiative Material (NORM) may be encountered are outlined in Division 1 and 2 of Part 16 (Radiation Safety) of the MSI Regulations. These regulations apply to operations in which the content of uranium or thorium or the products of their radioactive decay are above specified limits, irrespective of whether they are the primary mineral extracted or are present as a consequence of extracting other minerals.

The Radiation Safety Act 1975 (WA) also applies to NORM and any radioactive substance, irradiating apparatus and certain electronic products. This Act is administered by the Radiological Council of Western Australia (RCWA) within the Department of Health.

The Department of Water and Environmental Regulation separately covers matters pertaining to water quality, soil contamination and land clearing under various environmental legislations.

The Federal government also regulates matters dealing with radiation protection. Australian regulators with specific interest in NORM include:

- Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)
- Australian Safeguards and Non-Proliferation Office (ASNO)
- Department of the Environment, Water, Heritage and the Arts
- Department of Immigration and Border Protection
- Department of Industry, Innovation and Science.

Under the current proposal, M60-M72 of NMSF relates to radiation in mines. Where radiation exposure crosses the prescribed threshold, it is proposed that additional provisions from the MSI Regulations will be

retained. The radiation management plan will need approval from the Regulator/Chief Inspector of Mines (CIM).

Reynolds Review

The radiation regulatory environment is complex, requiring industry deal to with a number of regulators. In WA this primarily includes DMIRS, the RCWA and the Department of Water and Environmental Regulation (DWER).

Last year the WA Department of Health advised the Radiation Safety Act 1975 would be reviewed by Dr Chris Reynolds (Reynolds Review), an independent consultant with national experience in medical health and environmental legislation. Dr Reynolds was tasked with considering:

- Implementation of a risk based framework for radiation safety
- The appropriate regulatory authority for radiation safety in Western Australia
- The most effective approach to the provision of services to industry and the community

CME understands Dr Reynolds has finished his review and provided advice to the Minister for Health, the Hon. Roger Cook MLA. Further, CME understands a final report has been prepared but that this is not publicly available and is embargoed for internal government use only.

The State Government has regularly spoken of its commitment to improving cooperation and communication across agencies, and is pursuing a number of projects demonstrating meaningful commitment to this, for example Streamline WA. CME is therefore disappointed that findings from the Reynolds review were not made available to stakeholders for consideration as part of the WHS reform consultations, particularly given the significance of changes that may have been contemplated, including possible changes to the RCWA and the regulator/Minister under which it sits. CME considers it a missed opportunity to dovetail findings of the Reynolds Review into the WHS reform process and allow stakeholders to consider implications through appropriate consultation mechanisms.

While the detail of the Reynolds Review recommendations are not known, CME's members are aware of it occurring in the background. CME is concerned this has limited members appetite to meaningfully consider the WHS (Mines) Regulations proposals relevant to radiation given the understanding there may be changes in these provisions further to the report being made public.

CME is concerned at the potential for late Regulation amendments that seek to incorporate recommendations from the Reynolds Review once made public and inadequate consultation on these.

CME is disappointed recommendations from the Reynolds Review of radiation safety regulation weren't made available to stakeholders for consideration as part of the WHS (Mines) Regulations proposals and strongly recommends industry be given another opportunity to comment formally on the Regulations once findings available.

Current proposals

In relation to the current WHS (Mines) Proposals, Division 4 – Radiation, the key change is the insertion of reference to, and content from, the Radiation Protection Series No. 9 – Code of Practice and Safety Guide for Radiation Protection and Radioactive Waste Management in Mining and Mineral Processing (2005) ARPANSA (RPS9).

Given it is currently a requirement of company's radiation registration to comply with ARPANSA's RPS 9, CME supports reference general reference to RPS 9 within the WHS (Mines) Regulations. CME notes provisions addressing waste management from the current MSI Regulations are not part of the current proposal given these requirements are covered under RPS 9. CME supports this approach.

However, CME considers there are many areas of the current proposal that overcomplicate the relationship with RPS 9 by referencing to specific clauses or copying direct content from RPS 9. Just some examples of these are listed below:

- M61 (1) requires the mine operator to ensure that mining operations are not commenced unless a radiation management plan for the mining operations has been approved by the Regulator. This duplicates the requirements of RPS 9 Clause 2.7.1 which requires an RMP
- M62 details requirements regarding preparation of radiation management plans (outlined in RPS 9) and M62 (2) goes on require compliance with RPS 9 Clause 2.7.2.

- Subdivision 2 – Use and storage of radiation sources and irradiating apparatus is a direct cut and paste of content from RPS9.

This approach is duplicative and unnecessary. Further, it risks the WHS (Mines) Regulations becoming out of date should RPS 9 be updated into the future, resulting in incorrect clause references being enshrined within the WHS (Mines) regulations.

CME recommends Division 4 - Radiation include a relevant reference to “comply with your radiation registration requirement to comply with RPS 9”. The subsequent provisions within Division 4 should be then updated to remove detailed reference to specific clauses within RPS 9 and duplicated content throughout.

Health monitoring

M119 to M130 of the NMSF deal with health monitoring. This is another example of duplicated provisions between the WHS (General) and WHS (Mining) Regulations requiring cross reference and interpretation. Adopting CME’s above recommendation to instead create separate standalone regulations would dramatically improve the usability particularly in this section.

Industry supports risk based approach to health monitoring. Both the WHS (Mines) and WHS (General) Regulations are in line with this, requiring health monitoring to be conducted if there “is a significant risk of an adverse effect on the workers’ health because of the worker exposure’s exposure”.

The mining industry in WA has experience with prescriptive health surveillance regulations with the Mine Employee Health Surveillance System which commenced in 1996. This required health assessments to be conducted when any worker entered the WA mining industry, and then periodically or as directed. Two comprehensive epidemiological studies of the database conducted in 2010 and 2012 showed that these assessments neither prevented nor detected ill health at an early stage. These regulations were subsequently repealed in 2013 to allow the industry to apply a more risk-based approach to health surveillance.

CME is aware of requests for greater prescription with respect to health monitoring. CME would be concerned if any changes in this regard were progressed in the absence of detailed consultation to ensure any change are effective in preventing occupational illness.

Health monitoring has an important role in monitoring exposure risk however the focus must remain on keeping exposure to hazardous chemicals to as low as practicable levels.

CME supports the risk based approach to health monitoring proposed in the Regulations and recommends consultation with industry should any changes in this area be pursued into the future.

Fitness for work

Fitness for work is a key focus area for operators. The concept of fitness for work is broad and deals with the relationship between a worker and their ability to do their job safely and competently, and considers individual factors such as the effects of:

- Fatigue.
- Alcohol or other drug use.
- Physical fitness.
- Mental health and wellbeing

Risk factors associated with fitness for work may worsen or prolong the stress response, and therefore increase the potential for and duration of injury or illness. The promotion of mentally healthy workplaces can assist companies in meeting their duty of care to ensure employees are fit for work. The resources sectors ongoing commitment to creating an environment where individual mental health issues can be identified and addressed whilst maintaining privacy and confidentiality can reduce the risk of personal harm and contribute to a safer workforce, by supporting effective coping strategies and facilitating access to treatment.

In this context, fitness for work is dealt with in a fairly narrow, prescriptive manner in the proposed WHS (Mines) Regulations: NMSF M75 (Fatigue) and M76 (alcohol and other drugs) are the extent of the regulations that deal with fitness for work issues. They require a mine operator to ‘manage risks’ in respect if these matters. No corresponding duty is placed on workers, despite this being an area where the role of worker autonomy is significant.

CME considers that the concept of risk management for fitness for work should also be extended to physical fitness and mental wellbeing to the extent that an individual who is not fit for work due to physical or mental illness could present as a potential hazard to themselves or others. Acknowledging this as a potential hazard

provides an opportunity to proactively identify and support individuals through making appropriate accommodations.

The language around managing risk contained in this section of the Regulations should be qualified to a requirement to manage fitness for work risks so far as reasonably practicable, and specifically confined to matters within the control of the mine operator. This is because fitness for work is commonly influenced by a complex interrelationship of personal and work factors. Management of fitness for work outside of the workplace can influence the way that a worker presents for work. It is difficult for risks arising from these personal factors to be managed by the mine operator, and they cannot always be readily delineated from work factor influences. For this reason, CME also considers there should be a corresponding duty regarding fitness for work on workers.

CME recommends that the concept of fitness for work is amended to:

- include physical and mental health to the extent that might create workplace hazards;
- require mining operators to manage risks so far as reasonably practicable; and
- include an additional duty for workers in respect of fitness for work.

Plant and equipment

Risk management

Generally, duties are described around managing risks so far as is reasonably practicable. In contrast, NMSF M42 regarding the operation of autonomous plant requires ensuring the operation is 'without risks' so far as is reasonably practicable. Risk management is about managing risks not removing them entirely. It is also not clear why this risk is being specifically managed, given it is already captured by general duties for plant and equipment. High risk activities will never be 'without risk', so the focus should be on risk management.

CME recommends the obligation to manage risk in respect of autonomous equipment in NSMF M42 be cast in the WHS (Mines) Regulations as a requirement to manage risks so far as practicable, not to make the plant without risk so far as is reasonably practicable.

High potential incidents

Protection from self-incrimination

M146 – M149 deals with incident notification. M146 requires a notification to set out the information prescribed in Schedule 6, which includes certain details of the person injured, the incident, a description of the incident, and the consequences of the incident. CME considers that it would be appropriate for M146 to clarify that information provided in such a report cannot be used against the SSE, other workers, or the mine operator in legal proceedings. Clause 122(5) of the Rail Safety National Law (WA) Act 2015 provides an example of a protection for an operator which could be replicated in respect of M146. In addition, the prescribed content of the notification in Schedule 6 could be confined, to remove the requirement to report on the Schedule 6 item 2.2 and 3.1-3.3.

CME recommends that the regulations include protections against incrimination for the SSE, workers and the mine operator for content in a regulatory report under NMSF M146-M149.

Alignment with general industry regulations

CME observes that it is unclear how the notification requirements in M146 fit with the incident reporting requirements of Part 3 of the model WHS Act.

CME recommends that DMIRS instruct the Office of Parliamentary Counsel to align these requirements in NMSF M146 with Part 3 of the model WHS Act for consistency.

Clarification of scope of 'high potential incident'

CME considers that there needs to be more definition around what a 'high potential incident' means. For example, the definition could read something along the lines of '...high potential incident means any of the following incidents where they resulted in, or had the potential to result in, serious injury or fatality'. This would remove the ambiguity around what constitutes (for example) a 'significant' seismic event or 'extensive' subsidence. However, this approach would require redrafting of the provision because not all of the events described lend themselves to this qualification. For example the wording of M146 (n), loss of consciousness of a person, has a potential for ambiguity without a initiating factor, if a person is standing for a long period

of time at a prestart within the workplace environment and experiences syncope would this could be classified as a high potential incident. A better wording would be a “workplace incident resulting in the loss of consciousness of an involved person”.

CME considers that M146(d) should be removed from the definition of ‘high potential incident’ as there are cases when there would unavoidably be only one means of egress from a mine by design but where there is no material risk that require notification- for example, a new mine under development. Some of the other high potential incidents listed would potentially result in the condition where only one escape-way was available, so would be captured there.

M146 (g) regarding ‘the unintended activation, movement, loss of control of or failure to stop vehicles or machinery’ is too broad as drafted, unless qualified with the drafting proposed above connecting the risk to the potential results. As it stands, M146(g) is likely to capture a very broad range of events, creating a regulatory burden that does not enhance safety outcomes.

CME would also like to understand whether M146(i) is intended to materially change the types of explosives incidents that are currently being reported (currently any accidental ignition of explosives, or any delayed or fast ignition of explosives are reported), and whether DMIRS expects to receive notification of every malfunction (for example, every instance where explosives fail to function as normal).

CME recommends that M146(l) regarding self-heating of any material in an underground mine be amended or removed. There are several situations where instances of self-heating will be occurring constantly – for example, mines with sulphide mineralisation present (most copper, nickel mines) where oxidation occurs when these minerals are exposed to air and they heat up, and which do not practically present an imminent, high potential safety risk. Provided that M146(l) is appropriately qualified as suggested above, (l) could be replaced with a fire incident (i.e. a fire that resulted in, or had the potential to result in, serious injury or fatality). This would then guide the type of fires reported and would include severe cases of materials self-heating or combusting in an underground mine.

CME also considers that M146(p) regarding incidents that “might cause serious harm to a person, plant or structure” needs to be amended. It is not evident why incidents that damage or have the potential to damage plant or equipment (in absence of an imminent risk to a person) fall within the remit of WHS laws and therefore why they require reporting.

CME recommends the definition of ‘high potential incident’ be an incident that resulted in, or had the potential to result in, serious injury or fatality, and that M146(d), (l) and (p) be amended or removed from the definition.

Transitional provisions

Further clarity on training requirements for statutory function roles is needed to understand whether the proposed transition periods are operationally workable. If training can be delivered and administered at operator level, as is recommended by CME, implementation timeframes will be shorter.

The Consultation Package indicates the WHS (Mines) Regulations will require the development by the mine operator of an MSMS within 1 year of commencement of the WHS (Mines) Regulations, with a further 1 year for implementation.

CME is supportive of this timeframe for a mine operator's MSMS. However, 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 development of 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 MSMS and obtain approval of the system from the mine operator. It would be preferable to extend this transition timeframe to 2 years.

As previously mentioned, should mine operators need to do the job of consolidating the WHS (General) and (Mining) Regulations to work out what the final regulatory framework actually is the transitional period would need to be even longer than 2 years.

CME would also like to acknowledge generally the significant body of work the legislative changes will trigger for organisations to align terminology and assess new requirements. In most cases existing mine operators are already meeting the intent of these requirements, though their systems structured differently and alternate terminology used. This is an administrative and compliance-based activity that in itself will not add value to risk management practices. Health and safety resources will be required to be directed to these transition efforts, reducing capacity to complete on-the-ground, value-adding risk management activities

CME recommends the transitional period for the development of the MSMS, and for complying with training requirements for statutory roles, both be extended to 2 years for implementation (with alignment to the period

proposed for a number of other transitional arrangements). This position is conditional upon industry having the opportunity to review final proposed detail of the regulations and these regulations being separate. If this does not occur CME would expect longer transition periods to be provide for.

WHS (General) Regulations

The below section of the submission deals with specific matters relating to the WHS (General) Regulations.

Representation and participation

HSR training

Five day training period

Section 72(2)(a) of the model WHS Act requires a PCBU to make HSR training available as soon as practicable within three months after such training is requested. Regulation 21 of the Model WHS Regulations prescribes an initial training period of five days, within annual refresher training.

CME does not support the combination of the requirement for five days of HSR training within 3 months of it being requested. Member feedback has indicated that other jurisdictions have found this difficult to implement. This is particularly difficult to implement in the resources sector due to the remoteness of resource sector operations and in the context of roster cycles in which CME's member workforces operate.

The requirement to provide 5 days of training within three months of a HSR requesting it could be expressed as subject to the availability and accessibility of training. This is because, under the current regulatory structure, these requirements will apply to mining and petroleum workplaces where rostered work cycles and remoteness can make scheduling training different.

CME recommends the requirement for five days of training be removed, or qualified as 'subject to availability and accessibility of the training'.

Development and delivery of training

CME considers that PCBUs should be able to develop and deliver their own HSR training, particularly to overcome difficulties for remote mine sites. Many mining operators are also accredited training providers, and are therefore well placed to deliver training and contextualise this to the operation. CME considers that, as drafted, the legislation and regulations contain scope for this approach, though training is subject to regulatory approval.

CME also does not agree with corresponding recommendation of the Boland review, which recommends that SWA:

“Amend the model WHS Act to make it clear that for the purposes of s 72 [of the model WHS Act]:

- the HSR is entitled to choose the course of training; and
- if the PCBU and HSR cannot reach agreement on time off for attendance or the reasonable costs of the training course that has been chosen by the HSR, either party may ask the regulator to appoint an inspector to decide the matter.”

Implementation of this recommendation is not supported because it could create significant impost for PCBUs, particularly those who operate in remote or regional locations. In Western Australia, the Commission for Occupational Health and Safety has a statutory function of approving HSR training courses. This is an important safeguard and should be maintained.

There is a risk that a course chosen by HSRs may not be appropriately scheduled to meet operational requirements or not cover content that the PCBU has identified as necessary to enable the PCBU to meet its duties. The Boland recommendation could create administrative burden by introducing additional work for audit, contract and procurement teams (due to possible increase in total training provider numbers). It could also create significant impost on employers in regional or remote areas where the HSR's preference is not available at a location in proximity to the operation and the PCPU is liable for all associated costs of attending.

CME recommends the regulations continue to provide scope for PCBUs to develop and deliver HSR training, and that there be not entitlement for a HSR to choose their training course.

Annual refresher training

Regulation 21(2) of the Model WHS Regulations requires annual HSR refresher training. It is unclear how annual refresher training would improve safety outcomes. CME considers this is excessive and not relative to any level of risk in the HSR role. The only item likely to change in a 12-month period is new guidance or amendments to existing legislation which PCBUs should have mechanisms in place to monitor. Further, due to the generic nature of the training provided, companies provide additional specific training for HSRs on an ongoing basis further, removing the necessity and practicality of any externally delivered generic refresher courses.

It would be preferable to only require refresher training once during the three year term of an HSR, as is the case under the OSH Regulations. As a comparative example, Safer Together Western Australian and Northern Territory member companies have just made an industry decision for working at heights and confined space refresher training to be conducted every three years. This is some of the highest risk work that can be undertaken. Consistent with this industry-driven training, a one day refresher course every three years would be more than appropriate, if required at all.

CME recommends refresher training be able to be delivered internally, and is only required once during a HSR's three year term.

Remuneration

In contrast to the MSI Regulations and the OSH Regulations, the model provisions do not deal with whether training is to be remunerated and how any remuneration is calculated (including what components can be excluded such as overtime and travel allowances). CME is supportive of this risk based approach.

The resources sector agrees that workers should be remunerated in some capacity for training required for their role, and that given the high level of focus on managing fatigue within the workplace, scheduling training during rostered time off may not be appropriate unless additional controls are put in place. However, CME also observes if these matters are ultimately prescribed, there should be flexibility to remunerate any training via rostered days off and time in lieu, as an alternative to additional wages. If these matters are prescribed, it would also be preferable to clarify that a PCBU can direct training in non-working time (for example, during the off swing for Fly in Fly Out workers). This would be directed by PCBUs in a manner consistent with their duty to manage risk and provide a safe workplace, including managing fatigue.

CME recommends the current risk-based approach to pay and scheduling of training be retained, but if prescribed, there should be provision for training to occur in a rostered off swing, and for training to be remunerated flexibility such as by time in lieu.

Work groups

Regulation 17 of the Model WHS Regulations contains an extensive list of matters to be taken into account in negotiating work groups under regulation 16. The level of prescription in regulation 17 is inconsistent with the risk-based regulatory approach elsewhere in the regulations.

Work groups may be established for standing WHS issues or special purposes. They may involve representatives from across an operation or be confined to one Department. Given this diversity, flexibility should be allowed for work groups to adapt to the workplace culture. The matters that a PCBU 'must' take into account via regulation 17 will not always be relevant to the safety outcome sought by engaging a work group. For example, "the extent to which any worker must move from place to place while at work" is likely not a relevant consideration for a work group focussed on implementing zero tolerance alcohol and drug policies.

CME recommends that the matters in regulation 17 of the model WHS regulation be moved to non-mandatory guidance material, or at the very least be expressed as matters which 'may' be taken into account.

A non-prescriptive risk based approach should be taken to negotiating work groups, for example by making regulation 17 of the Model WHS Regulations non-mandatory or moving it to guidance material.

CME is also concerned that the 'parties to work group negotiations' are unclear. This should be expressed in regulation 16 as negotiations between a PCBU and its workers for clarity. This is consistent with the purpose of work groups as internal consultation groups.

CME recommends that regulation 16 be clarified to include the PCBU and its workers as the parties to work group negotiations.

High risk work licenses

Regulation 89 of the Model WHS Regulations contain a requirement for an applicant for a high risk licence to be assessed in Western Australia. Part of this assessment involves considering whether the person resides in Western Australia, or “resides outside [this jurisdiction] and circumstances exist that justify the grant of the licence.” CME is concerned this model WHS regulation is unduly restrictive. CME’s member companies often employ persons from interstate, including on a fly-in-fly-out basis.

The existing arrangements in the *Occupational Safety and Health Act 1984* (WA) (OSH Act), which are currently applied to mining via the MSI Act, permit workers who have been assessed interstate by an accredited assessor to apply for a high risk work licence. This facilitates workers moving interstate and obtaining a high risk work licence in Western Australia, based on their interstate qualifications. Further, consistent with the intent of operating in a nationally harmonised WHS environment, this should be even more feasible.

A person’s place of residence is irrelevant to their job skills and competence. It is restrictive and may hamper recruiting experienced and competently trained personnel outside of Western Australia. Many of CME’s members are global companies and require that their workforce have the flexibility to work across borders. It is also an administrative burden for interstate HRWL to be reassessed within Western Australia. Companies place high importance on quality provision of HRWL training irrespective of where it is delivered. When considered with the existing verification of competency structure for HRWLs this model limits recruiting and workforce flexibility for little benefit. CME considers that allowing persons to apply for a HRWL based on interstate qualifications will best achieve the intent of the HRWL to ensure a consistent level of competence.

CME recommends the status-quo position in the OSH Act be maintained, allowing persons to apply for a high risk work licence in Western Australia, based on their recognised qualification.

Regulation 87(2)(f)(ii) of the Model WHS Regulations stipulates applications for a HRWL must enclose a copy of a certification that was issued “no more than 60 days prior”. OSH regulation 6.6(3)(a) merely requires a ‘recently issued’ certification, to allow flexibility. This OSH regulation applies to both mining and general regulated workplaces, on the basis that the WHS (Mining) Regulations adopt the whole high risk work licenses regime under the OSH Act.

CME considers that 60 days is too narrow and prescriptive. It would be preferable to maintain the status quo under the OHS regulation or lengthen the period to ‘90 days prior or as other otherwise directed.’

CME recommends regulation 87(2)(f)(ii) of the Model WHS Regulations be adapted for Western Australia to remove the requirement to provide a certification issued ‘no more than 60 days prior’ and replace it with a ‘recently issued’ certification or a longer prescribed period, or with a requirement to provide a certification issued 90 days prior.

Other licenses

Provisions 256(2)(i); 497(2)(i); 497(2)(d) of the Model WHS Regulations each contain a residential requirement for registration of plant design and asbestos removal licences. As for HRWLs, there is no equivalent requirement in OSH Regulations or in the MSI Regulations. If adopted, the model will reduce the flexibility of employers to recruit workers from interstate and will unnecessarily add costs, by requiring the person to be reassessed in Western Australia. Please refer to CME’s comments above on the similar requirement for HRWLs.

CME recommends the Regulations should allow persons to apply for a plant registration or asbestos removal license in Western Australia, based on their interstate qualification.

Review of decisions

Part 12, Division 2 of the model WHS Act allows a PCBU to apply for internal review of a ‘reviewable decision’, which includes a decision on an improvement or prohibition notice. Section 228 within this Division allows the reviewer to stay the decision while the review is considered. Section 228(6)(a) provides that a stay of the operation of a decision pending a decision on an internal review continues until the earlier of the end of the ‘prescribed period’ for applying for an external review of the internal decision, or when an application for external review is made. Regulation 701 of the Model WHS Regulations contains a placeholder for a jurisdiction to prescribe the period for section 228(6)(a). The Consultation Package infers that DMIRS intends to insert a period of 7 days, consistent with the OSH Act and MSI Act.

CME considers that a 7 day period under the MSI Act and OSH Act for review of decisions on improvement and prohibition notices is acceptable, but is supportive of extending this timeframe to 14 days to allow the

mine operator with further time to collate information on the incident and formulate a position to facilitate meaningful engagement with the regulator.

CME recommends the period for a PCBU to seek external review of an improvement or prohibition notice be 14 days, or at least 7 days under the proposed WHS (General) Regulations, to enable a meaningful opportunity for review.

Health and hygiene

As noted above the health monitoring requirements within the Model WHS Regulations are a primary example of where separate, stand-alone mining regulations would make compliance requirements clearer, and avoid duplication. This is detailed further below.

Asbestos

Chapter 8 of the Model WHS Regulations details asbestos management requirements. These requirements are unnecessarily prescriptive and therefore inflexible in a reform environment where the intention is to move to outcomes based safety risk management. For example, regulation 482 within this Part requires air monitoring to be conducted by a competent person. This overlaps with the general duties on air monitoring in Part 3.2, Division 7 in a way that will likely make identifying compliance standards difficult and ambiguous.

The mining industry in particular is very familiar with assessing asbestos risks, and implementing asbestos management plans as appropriate, given the nature of its operations. The industry currently takes an effective risk based approach. If these provisions are retained, there should at least be a clear delineation between the six different types of naturally occurring asbestos as the risk factors associated with each type are different.

At least as relevant to mining, at a minimum, the WHS (General) Regulations should reflect the MSI Act and the Code of Practice for the Safe Removal of Asbestos 2nd Edition, section 9.3.

Health monitoring

The CME is supportive of a risk based approach to health and hygiene monitoring. The Model WHS Regulations require that health monitoring records for lead, asbestos and hazardous chemicals are provided to the worker on cessation of employment.¹⁸

The MSI Regulations do not require an employer to provide their employee with health monitoring records for lead, asbestos and hazardous chemicals on cessation of the employee's employment.

CME considers that the approach under the Model WHS Regulations is acceptable, but with the qualification that:

- if the practices of the PCBU are to provide the results of the worker at the time the record is created; or
- the WHS (General) Regulations otherwise require that the results are provided to the worker at the time the record is created (e.g. clause 441 of the Model WHS Regulations),

then it is not necessary to provide a further copy to the worker on cessation of employment.

The requirement as proposed would likely create more administrative work and potential costs for PCBUs. An approach to achieve the intent behind the section - of ensuring worker's receive this information - would be to have a recording requirement for when the data is provided to an individual.

CME recommends the WHS (General) Regulations provide that it is not necessary to provide a copy of health monitoring records to the worker on cessation of employment if the results are provided to the worker at the time the record is created.

As discussed above, CME observes that the Model WHS Regulations require health monitoring for those at 'significant risk' of exposure to hazardous chemicals (see r 368). CME is supportive of this risk based approach.

Regulation 368 of the Model WHS Regulations should be retained and not replaced with a more prescriptive system.

¹⁸ See model WHS regulations 378(1)(b); 388(3); 418(1)(b) and 444(1)(b).

Noise

Exposure standard

As discussed above, CME is concerned that the unit used for the noise exposure standard is a '(C)' weighting, not a linear rating, in Chapter 4, Part 4.1 of the Model WHS Regulations. This is not fit for purpose for mining given the nature of noise frequency.

Further, the requirement that noise exposure at a workplace not exceed the exposure standard for noise differs from OSH Regulation 3.46 and MSI Regulation 7.4. The current regulations are similar but are qualified with so as far as practicable.

CME recommends the noise exposure standard, and requirements on not exceeding that standard are aligned to the status quo under the OSH Act and MSI Act, in place of those in Chapter 4, Part 4.1 of the Model WHS Regulations.

Personal Protective Equipment (PPE) as a standard

Regulation 58 of the Model WHS Regulations outlines a requirement for audiometric testing of noise. This requirement is qualified by the language, "this regulation applies in relation to a worker who is frequently required by the person conducting the business or undertaking to use personal protective equipment to protect the worker from the risk of hearing loss associated with noise that exceeds the exposure standard for noise."

CME understands that the intent of regulation 58 is to identify the workers that are at a high risk of exposure to noise, so the PCBU can monitor those workers. There could be unintended consequences with this drafting. For example, it may disincentivise the use of hearing protection as a precautionary measure, where the risk of noise level exceedances is low. This regulation should be framed in a way that enables PCBUs to make an informed decision on what is high risk, rather than by reference to choices on other identified risk management measures.

CME recommends the implementation of PPE not be the reference point for determining whether a worker is at a high risk of exposure to noise. Rather, recognised standards on noise exposure should be applied in determining what high risk is.

Frequency of testing

CME supports the inclusion of a requirement for initial audiometric testing of a worker within their first three months of employment (regulation 58 of the Model WHS Regulations). Most PCBUs in the mining industry would likely achieve compliance well within this period because it is common to conduct audiometric testing as a pre-employment medical check before letting a worker start any work duties, to get a baseline measurement.

The requirement to re-test every two years under regulation 58(2)(b) is prescriptive, and challenging to implement, particularly as regards contractor's workers. New South Wales has not adopted this requirement in its harmonisation to the model law. If retained, this requirement should be qualified by two years of 'accumulated work exposure'. This would ease the compliance requirement without compromising safety outcomes by excluding long periods of absence like maternity leave, office assignments and long service.

It should be noted there are limitations to audiometric testing as a risk management measure. This is because there are complexities in differentiating whether noise-induced hearing loss occurred as a result of work related exposure or not. For example, use of handheld listening devices and headphones from a young age is common. However, this is not taken into account when assessing noise induced hearing loss and its causes. Other health surveillance controls better account for such complexities for example lung function tests and identification of whether prior smoking has occurred.

CME recommends a more risk based approach to audiometric testing, in line with health monitoring practices for other health hazards. At a minimum CME would preference the prescriptive timeframes for audiometric testing are removed or at least qualified as requiring a period of 'accumulated work exposure'.

Lead

Chapter 7, Part 7.2 of the Model WHS Regulations deals with lead. In particular, regulation 403 outlines the requirement to notify lead risk work to the regulator within 7 days. There is no equivalent to this requirement in the OSH Regulations or MSI Regulations. The safety outcome sought by introducing additional compliance requirements is unclear, as is the evidence base for it. This requirement may also have unintended consequences, for example by creating an environment where an employer classifies borderline cases as

not lead risk work, as opposed to lead risk. A more outcomes focussed requirement would be to notify the regulator if a person exceeds the blood lead limit.

CME recommends that the notification requirement for lead risk work be replaced with a more specific requirement to notify where a person exceeds the blood lead limit.

Smoking

The Consultation Package proposes to include the OSH regulations on protection from tobacco smoke (r 3.44A to 3.44I). There will also be some amendments reflecting the tobacco smoke exclusion in the MSI Regulations for non-coal underground mines.

CME observes that the OSH Regulations do not deal with a scenario where, when permitted by an employer, a person may smoke in designed areas of accommodation provided by the PCBU for which the worker works. CME considers that worker accommodation is not a workplace and therefore should not fall within the scope of these regulations. However, as there is ambiguity on this it would be helpful to expressly carve this scenario out of the regulations.

CME recommends the regulations regarding the protection from tobacco smoke are specified not to apply to worker accommodation, and that consideration be given to expressly scoping this out.

Manual handling

Regulations 60 and 61 of the Model WHS Regulations deal with requirements to manage risks associated with manual handling tasks. CME considers it is unnecessary to include a prescription on this risk, especially for the resources industry where this is an identified commonly managed risk. It would achieve better safety outcomes to remove prescription and instead promote innovation in how these risks are managed. This risk it is already captured by requirements to comply with general duties.

CME recommends regulations 60 and 61 of the Model WHS Regulations regarding manual handling tasks be removed, because these risks are covered by general duties. Further, prescription might limit innovation in risk management approaches for these tasks.

Emergency management

Model WHS regulation 42 (duty to provide first aid) and regulation 43 (duty to prepare and implement emergency management plan) duplicate requirements of the WHS (Mines) Regulations. These aspects are more than adequately covered off under WHS (Mines) Regulations requirements for:

- Content within the Mines Safety Management System (NMSF M24(1)(d)(ii)).
- An emergency management plan (NMSF M99).

CME recommends Regulation 42 and 43 of the model WHS regulation expressly not apply to PCBUs in respect of their activities covered by the WHS (Mines) Regulation, to avoid duplication.

Removal of unnecessary duplication between Regulations and Dangerous Goods Safety Act 2004

Noting DMIRS's intention to retain a separate regulatory regime for dangerous goods (DG), CME welcomes the removal of unnecessary duplication between WHS and DG requirements. However, CME considers that there is the potential to simplify the two regimes further, by ensuring that there is no unnecessary overlap. As examples:

- The obligation under clause 344 of the Model WHS Regulations (the duty of a PCBU to obtain safety data sheets) appears to be a very similar requirement to clause 77(2) of the Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007 (WA).
- The obligation under clause 359 of the Model WHS Regulations (fire protection and fire fighting equipment) appears to be very similar to the requirements of clause 73 of the DG Storage and Handling Regulations.

A detailed review of DG legislation should be conducted to ensure that all unnecessary duplication with the Regulations is removed. The interaction of existing DG legislation and the Regulations should be made clear.

Electricity

The Consultation Package refers to the new provisions dealing with live electrical work introduced by the *Occupational Safety and Health Amendment Regulations 2017* on 14 May 2018, and observes that equivalent provisions are not present in the Model WHS Regulations. There is an implication that the Government intends to make equivalent amendments to the Model WHS Regulations as part of this reform.

It is difficult for CME to affirmatively support this proposal in absence of reviewing specific drafting to adequately assess implications. CME supports, in principle, the general prohibition on live electrical work. However, CME is concerned that the prohibition of live work without appropriate exceptions will add to operational costs for resource sector operators because it will require shut downs of plant, resulting in lost production. In many cases, the risk associated with live work may be managed through control measures so an absolute prohibition on live work in all cases is unnecessary.

It is important that the prohibition does not extend to mining operators who act in a network operator capacity and in that capacity are authorised to conduct live electrical work.

The defined terms in Part 4.7 (Electrical safety in workplaces and energised electrical work) should be aligned with the defined terms in the Electricity (Licensing) Regulations 1991 and that further opportunity should be provided to the mining industry to consult on the drafting to ensure there are no unintended consequences for live work in mining operations.

Suspending authorisations

Regulations 110 (HRWL) and 524 (asbestos licenses) provide the regulator with the power to suspend an authorisation where there is an imminent, serious risk to health and safety. There is no equivalent to these proposed regulations in the MSI Regulations or the OSH Regulations, and CME considers these regulatory powers are unnecessary and duplicative. A prohibition notice may be issued to prohibit the relevant work under regulation 195 in these circumstances.

CME recommends that the power to suspend authorisations under regulations 110 and 524 be removed, as this is already achieved by the prohibition notice mechanism.

Definition of container

In the Model WHS Regulations, container is defined as: “in relation to a hazardous chemical, means anything in or by which a hazardous chemical is, or has been, wholly or partly covered, enclosed or packed, including anything necessary for the container to perform its function as a container.”

CME is concerned by the breadth of this definition. The definition is used in the Hazardous Chemical section (Part 7.1). Part 7.1 Regulation 342 of the Model WHS Regulations requires all ‘containers’ to have Global Harmonisation System (GHS) labelling. Hence, items such as tanks, hoppers, silos, pipelines, etc. must have GHS labels. However, large ‘containers’ / storage units also require other warning labelling, being a placard, under Part 7.1.

As an example, a tank of acid would be required to have a GHS label and a Dangerous Goods Placard. Both requirements are contained in Part 7.1. CME is concerned there is an unnecessary duplication of requirements, imposing GHS labelling on ‘containers’ in addition to requiring other warning labels such as placarding.

This issue might be resolved by placing a limit on the capacity of containers that require labelling e.g. a container of dangerous goods with a capacity exceeding 500 litres or net mass of more than 500 kilograms. This would mean that GHS labelling is focused on smaller containers which are more likely to be routinely handled (moved, decanted from, used, etc) by staff, and hence, provides the warnings to staff on the product hazards. This is more appropriately targeted hazard information. For large ‘containers’ placarding applies above a certain quantity and therefore the main hazards identified through placarding.

CME recommends that the definition of ‘container’ should be limited to dangerous goods with a capacity exceeding 500 litres or net mass of more than 500 kilograms, to provide product hazard information to workers on containers likely to be handled.

Trenches

Regulations 306(1) and 306(2) of the Model WHS Regulations requires a PCBU to prevent unauthorised access to an area where a trench is to be dug. There is no equivalent to this requirement in the MSI Regulations or OSH Regulations. If adopted in the WHS (General) Regulations, this will be an example of added prescription that is better managed in a bespoke manner via a risk based approach.

CME recommends that regulation 306(1) and (2) of the Model WHS Regulations not be adopted in the WHS (General) Regulations on the basis that this issue is better managed in a bespoke manner via a risk based approach.

Regulation 306(4) of the Model WHS Regulations requires a geotechnical engineer to ensure the sides of a trench are safe from collapse. There is no clear definition as to what constitutes a 'trench'. Assuming a broad view is taken, the requirement for geotechnical engineer to review all trench works may not be practicable. For example, if trenches under 300 mm required geotechnical sign off this would substantially increase the regulatory burden. There does not seem to be evidence based on a safety outcomes focus for such a regulatory extension.

CME recommends regulation 306(4) of the model WHS regulation as adopted replaces the requirement for a trench to be assessed by a 'geotechnical engineer' to 'geotechnical engineer or competent person'.

WHS (Petroleum and Geothermal Energy Operations) Regulations

The below section of the submission deals with specific issues relating the WHS (Petroleum and Geothermal Operations) Regulations (PGEO Regulations). CME understands that the proposed approach, in general, involves less prescription and less citing of Australian Standards to allow for a pure risk based approach. CME is supportive of the consolidation of 8 sets of regulation into a single set of PGEO Regulations which is a positive change, as it reduces regulatory management and standardises requirements for these work activities.

While the current proposals represent significant streamlining of the current system, the approach could be further improved by developing standalone regulations as recommended above.

Scope

Page 8 of the proposal for the PGEO Regulations within the Consultation Package (PGEO Proposal) deals with the concept of 'at' and 'near' to all PGEO in relation to the scope of the regulations. This differs to the status quo. Currently application of the legislation to things 'at' or 'near' petroleum operations is only in the Petroleum (Submerged Lands) Act 1982 (WA). This terminology is ambiguous as it can be subject to interpretation.

CME recommends that the term 'near' is defined, and that consideration be given to prescribing criteria to be taken into account such as a specified kilometre distance, ability to physically be impacted and level of interaction with the operation.

Structure

DMIRS proposes to not apply a majority of the WHS (General) Regulations to PGEO.

As per page 4 of PGEO Proposal, it is anticipated that the following Parts of the WHS Regulations will apply to PGEO on the basis that DMIRS believes this would reduce duplication:

- Parts 2.1, 2.2, 2.3, 2.4 of Chapter 2 on representation and participation, which provide for workplace consultation, Health and Safety Representatives, and Safety Committees.
- Part 3.1 in Chapter 3, which covers general risk and workplace management.
- Part 11.3 in Chapter 11, which provides for the clarification of miscellaneous matters.
- Schedule 10, which outlines prohibited carcinogens, restricted carcinogens and restricted hazardous chemicals. This Schedule will replace the provisions in the current three sets of OSH Act regulations related to PGEO, which are linked to Codes of Practice by the National Occupational Health and Safety Commission.

CME supports not applying the majority of the WHS (General) Regulations to PGEO and enabling a safety case approach.

Definition of Major Accident Event (MAE)

The PGEO Regulations propose that "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 PGEO

operator cannot control. As an example, it is unclear the extent to which an operator would be required to address situations where a person is trespassing at the facility.

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

CME recommends that careful consideration is given to the interaction of the definition of MAE with other sections of the WHS (PGEO) Regulations to ensure duties do not expand to trespassers or persons causing malicious damage. Further duties to the public should be qualified by 'as low as reasonably practicable' or 'as so far as reasonably practicable'.

Safety cases

While not mentioned in the PGEO Proposal, there has been discussion of providing HSRs with a right to seek review of safety cases. CME considers it is inappropriate for an individual to have this right, and it may be misused for industrial purposes. It would create uncertainty for operators and may increase costs associated with the development and review of safety cases.

CME recommends that HSRs have no specific power to seek a review of a safety case.

The PGEO Proposal foreshadows an increase to the assessment period for safety case approval of a pipeline, from 28 days under the *Petroleum (Submerged Lands) (Pipelines) Regulations 2007* (WA) to the proposed 90 days for a new safety case or 30 days for a revised safety case in the Consultation Package.

Industry is generally supportive of this proposal, as it the same as the offshore regime. This would align the information and timing for the trunkline safety case (where it passes through Commonwealth into state waters). However, a potential concern is the initial 90 days will give PGEOs less flexibility to move their schedule for state water pipeline construction because of the long approval time.

CME supports alignment with the Commonwealth safety case approval timeframes in principle, but would prefer the initial approval to be 60 days rather than 90 days to provide flexibility for scheduling construction.

Further clarification is required on the circumstances in which the regulator can seek review of a safety case. This is not dealt with in the Consultation Package, and is of significance to the PGEO industry.

CME recommends that further clarification be provided on the circumstances where a regulator can seek review of a safety case.

Design Case

Page 7 of the PGEO Proposal provides for the option for companies to submit a design case for review. CME understands that this formalises a process that already occurs in practice. CME considers there are many benefits with this approach, and is supportive of it.

CME supports the proposal to include regulation allowing for review of a design case, provided that this remains optional.

Reporting

Pages 7, 16 and 20 of the PGEO Proposal propose that accident and dangerous occurrence reporting move from monthly to quarterly. The reason for this change is unclear, though pages 16 and 20 of PGEO Proposal explain that the data provided via these reports will be used to track industry performance.

CME would like clarification on whether there will be any limits on how data is used by the regulator. CME considers there should be a limit on this to ensure privacy is protected.

CME considers that further consultation on the scope of 'dangerous occurrence' is required to ensure the right data is being supplied, balanced against considerations of minimising administrative burden and ensuring that data is not supplied for data for trend analyses that have no tangible safety benefit. For example, a failure of a Safety Critical Element to meet a performance standard may not be recognised as a dangerous occurrence within PGEO's systems.

CME recommends DMIRS clarify what data is to be reported on a quarterly basis, why this data is considered needed, and how the data is intended to be used.

The definition of notifiable incidents under the WHS (General) Regulations will apply, in addition to specific incidents in the PGEO Regulations. Many of the proposed PGEO-specific notifiable incidents have come

across from existing laws. New notifiable incidents include a failure of a Safety Critical Element (SCE) on demand; failure of an SCE to danger; and significant damage to primary containment.

CME is concerned that the proposed list of notifiable incidents for the PGEO industry does not align to incidents in the Commonwealth offshore legislation. This incongruence illustrates the benefit of having industry specific regulations for PGEO that replicate the WHS (General) Regulations only as necessary for safety outcomes. The misalignment to the Commonwealth regime will impose unnecessary regulatory burden on the industry, and may lead to uncertainty about reporting requirements.

CME recommends the definition of 'notifiable incident' for PGEO is aligned with the proposed list and the definition of 'dangerous occurrences' in the Commonwealth offshore petroleum legislation.

Exclusions

Page 5 of the PGEO Proposal deals with excluded activities. Certain activities will be explicitly excluded from being PGEOs. Those activities will include operating a vessel supporting a remotely operated vehicle or diving operation that is being used for one of the following:

- Inspecting
- Cleaning
- Non-disturbing span rectification (for example grout bagging) on
- Operating a valve on
- Recovering debris from
- Valve control unit change out on
- The removal of weight coating from a pipe prior to hydrostatic pressure testing of a petroleum facility

The *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Cth) contain further excluded activities, for example:

- Vessel placing support structures or foundations on the sea bed for the purpose of a facility
- Vessel undertaking pipe trenching and burial during the construction of a facility
- Vessel installing jumper or placing a subsea pipeline manifold during the construction of a facility

CME considers that closer alignment with the Commonwealth regime will make the PGEO Regulations more certain and consistent across operations, which will better achieve safety outcomes.

CME recommends the excluded activities for the purpose of the PGEO Regulations align with the excluded activities for the purpose of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Cth).

Conclusion

CME is appreciative of the opportunity to comment on the Regulations as part of the current public consultation period. Our sector recognises the important role that WHS legislation plays in providing a clear, outcome-focussed and non-prescriptive framework in which to drive best practice safety.

The current WHS legislative reforms are an opportunity to implement modern best practice, risk based legislation in WA. Risk based legislation is that which is non-prescriptive, and requires a range of broadly defined duty holders to identify hazards, assess risks arising from those hazards and then implement reasonably practicable control measures. It has long been recognised that a risk based approach drives safety improvement and can accommodate innovative technological change

CME continues to support the Governments single Act reform approach however, as outlined in the above submission, is concerned the proposed structure of the Regulations does not support the objectives of the current reforms to modernise health and safety legislation and reduce prescription, enshrining a risk-based approach for the resources sector. CME considers it has the potential to create a more complex and confusing regulatory environment for end users, and will inhibit the mining industry's ability to progress to a truly outcomes based legislative structure (like the petroleum industry) by directly tying them to the general WHS regulations and instead recommends separate, standalone regulations instead be developed for mining and PGEO industries relative to other workplaces, mirroring common provisions as required.

Appreciating the tight timeframes the Government is working towards to finalise these reforms, CME reiterates the importance of further providing further consultation and clarity on the proposed Regulations.

CME looks forward to ongoing engagement on this important project. If you have any further queries regarding the above matters, please contact [REDACTED]

		Date	Signed
Paul Everingham	Chief Executive	5/12/2019	[REDACTED]
K:\Occupational Safety & Health\Projects & Issues\Legislation\Labor Harmonisation			

Appendices

Appendix I: WHS (General) Regulations

Comment no.	Provision / Recommendation in Consultation Package	Provisions of the model WSH regulations affected	Comment
1.	For the purpose of high risk work licensing, boilers are defined as having less than 5 square metres heating surface or 150 kilowatt output	5	Whilst, this represents a departure from the OSH Regulations requirement to provide that a high risk work licence is not required for boilers of 500kw output or less, CME is supportive of aligning the requirements with the model, provided that there is appropriate time to transition to the new compliance requirements.
2.	Jurisdictional note against the 'electricity supply authority' definition is not addressed in the Consultation Pack	5	CME considers that it would be appropriate to define 'electricity supply authority' by reference to 'network operator' from regulation 4 of the <i>Electricity (Network Safety) Regulations 2015 (WA)</i> . Any definition should avoid an unintentional application to mining companies that are network operators under electrical legislation, and should align with the previous terminology.
3.	Negotiations for work groups	16	The parties to work group negotiations are not clear. This regulation should specify the parties as the PCBU and its workers.
4.	Extensive list of matters to take into account in negotiating work groups.	17	It would be preferable to not include this level of prescription, to allow greater flexibility. This is detailed further in the body of CME's submission.
5.	Procedures for electing HSRs	18	CME is supportive of the flexible approach to HSR elections in the Model WHS Regulations. However, CME considers that the regulation should require a secret ballot, as is currently required under s 31(6)-(11) of the OSH Act and under s 56 of the MSI Act. Member experience is that secret ballots encourage voting and avoid pressure from union representatives.
6.	Initial 5 days of training for HSRs, then annual entitlement to one day refresher training.	21	CME considers that 5 days of training for HSRs, and annual refresher training is unnecessarily prescriptive and is not required to achieve safety outcomes. Training requirements should be expressed as subject to the availability of training, particularly given these requirements will also apply to mining and petroleum workplaces where rostered work cycles and remoteness can make scheduling training different. If the PCBU was able to conduct the training themselves, this would limit/manage any disruptions. Please refer to detail in the body of the submission.

Comment no.	Provision / Recommendation in Consultation Package	Provisions of the model WSH regulations affected	Comment
7.	Ability for HSRs to trigger a review of asbestos control measures, including wherever a provision requires a risk assessment.	38(2)I; 38(4); 401(1)(g); 401(3)	There is no equivalent right to this regulation in the OSH Regulations or in the MSI Regulations. This change would expand HSR powers, into areas where HSRs likely will not possess the requisite expertise. This may create an operational burden by creating more administrative work and potential costs for businesses.
8.	Ability for HSR to review asbestos management control plan at their request	430(1)(d); 430(2)	There is no equivalent in the OSH Regulations or the MSI Regulations. This change would expand HSR powers, and may create an operational burden.
9.	Require that health monitoring records for lead, asbestos and hazardous chemicals are provided to the worker on cessation of employment.	378(1)(b); 388(3); 418(1)(b); 444(1)(b).	<p>Under the MSI Regulations, health monitoring records for lead, asbestos and hazardous chemicals are not required to be provided to the worker on cessation of employment. CME supports the inclusion of the Model WHS Regulations, but with the qualification that:</p> <ul style="list-style-type: none"> • if the practices of the PCBU are to provide the results of the worker at the time the record is created; or • the Regulations otherwise require that the results are provided to the worker at the time the record is created (e.g. clause 441 of the Model WHS Regulations), <p>then it is not necessary to provide a further copy to the worker on cessation of employment.</p> <p>Without qualification, this requirement would likely create more administrative work and potential costs for businesses.</p>
10.	Requires that flammable or combustible substances are kept to the lowest practicable quantity.	53	CME considers this regulation is not required. There is no “lowest practicable” requirement in relation to flammable or combustible substances in the MSI Act or the MSI Regulations, so this would represent additional regulation for mining. This need for this regulation is reduced by other obligations to safely store these substances, including under DG legislation.
11.	Requirement that noise exposed to at a workplace does not exceed the exposure standard for noise	57(2)	CME is concerned that the unit used for the noise exposure standard is a ‘(C)’ weighting, not a linear rating. Further, OSH Regulation 3.46 and MSI Regulation 7.4 contain obligations to manage noise risks but with the qualification of as far as practicable. This qualification should be included. Please refer to the body of this submission for detailed comments on noise risks.
12.	Requirement for audiometric testing of noise	58	Currently this is generally captured by r 3.27 of the MSI Regulations on health monitoring. Neither the OSH Regulations or MSI Regulations specifically require this. CME is supportive of audiometric testing provided that it is safety outcome focussed. Please refer to the body of the submission for details.

Comment no.	Provision / Recommendation in Consultation Package	Provisions of the model WSH regulations affected	Comment
13.	Duties for designers, manufacturers, importers and suppliers of plant in relation to noise, manual tasks and confined spaces.	59; 61; 64	<p>The model WHS Act includes clauses that impose obligations on designers, manufacturers, importers and suppliers of plant. We understand that WA is likely to adopt these.</p> <p>Other than citing the specific hazard in relation to plant, regulations 59, 61 and 64 do not enhance the duties provided in the proposed Act. Given this, CME considers would be preferable to exclude these specific duties from the regulations.</p> <p>This approach is consistent with Part 6 Division 2 of the MSI Regulations, which only sets out general duties for designers, manufacturers, importers and suppliers in relation to safety in using certain types of plant in mines.</p> <p>If the specific duties are adopted, this may require a transitional period as it would be a departure from many existing systems in businesses.</p>
14.	Confined spaces – requirements for emergency procedures, plant and services and PPE	70; 74; 75	<p>These arguably do not create duties substantially different than the primary duty of care, and do not set a clear standard relative to what is currently in place. The MSI Regulations identify that the manager or employer at a mine must ensure that the requirements of AS 2865:2009 are complied with in relation to work carried out in a confined space in a mine. It would be preferable for the new requirements to continue to align with AS 2865:2009.</p>
15.	Requirement for training in relation to general workplace management and confined spaces.	39; 76	<p>These regulations arguably do not create duties substantially different than the primary duty of care, which includes a specific reference to training that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking.</p> <p>There is no training in relation to workplace management and confined spaces in the MSI Act or the MSI Regulations. R 3.87 of the OSH Regulations only deals with training for work in confined spaces.</p> <p>Implementing these new training requirements may create new costs for businesses, without there being a clear benefit to safety outcomes. On this basis, CME opposes the inclusion of this regulation.</p>
16.	Exclusions for HRWLs	82(2)(a)	<p>Regulation 82 deals with exemptions for HRWL. A person who carries out high risk work involving plant does not need to be licensed if 'the work is carried out at a workplace solely for the purpose of the manufacture, testing, trialling, installation, commissioning, maintenance, servicing, repair, alteration, demolition or disposal of the plant at that workplace or moving the plant within the workplace' (82(2)(a)). may restrict in field maintenance work. It is not clear where</p>

Comment no.	Provision / Recommendation in Consultation Package	Provisions of the model WSH regulations affected	Comment
			barricading the area is sufficient to meet this requirement, or whether the words 'workplace solely for the purpose of' preclude in field maintenance work. CME would like clarity on this section.
17.	Requirement on PCBU to not allow a worker to supervise high risk work unless there is written evidence they hold a HRWL for that work	85(3)	CME observes that there is a potential unintended consequence that this regulation could be interpreted as requiring all supervisors of high risk work to hold a HRWL for the class of work that they are supervising. This should be clarified in the drafting.
18.	Applications for a HRWL must enclose a copy of a certification that was issued no more than 60 days prior.	87(2)(f)(ii)	OSH regulation 6.6(3)(a) merely requires a 'recently issued' certification, to allow flexibility. This OSH regulation applies to both mining and general workplaces, on the basis that the mining regulations adopt the whole high risk work licenses regime under the OSH Act. CME considers that whilst the proposed new period of 60 day will be sufficient in most cases, there may be scenarios where it is insufficient time to provide a copy of the certification. It would be preferable to maintain flexibility by using wording similar to that in the OSH Regulations, or prescribe '90 days or unless otherwise directed'.
19.	Requirements on an applicant for a HRWL to show they reside in Western Australia, or if other circumstances exist that justify the grant of a HRWL.	89(2)l	Under the OSH Regulations, an applicant's residential address is not relevant to assessment of applications. The Commissioner just needs to be satisfied of competency, based on the matters in r 6.6(3). This includes whether the applicant has recently been issued a notice of satisfactory assessment. If adopted, the model will reduce the flexibility of employers to recruit workers from interstate and will unnecessarily add costs, by requiring the person to be reassessed in Western Australia.
20.	Conditions on HRWLs	91A	Regulation 91A provides for the imposition of conditions on a HWRL. CME seeks clarification on how its members might verify if any conditions are imposed on a HRWL in practice. In particular, clarity is sought on whether it will be displayed on the license or on the WorkSafe website. The requirements for a 'licence document' do not require conditions to be indicated on the license.
21.	Residential requirement for registration of plant design and asbestos removal licences.	256(2)(i); 497(2)l; 497(2)(d)	There is no equivalent requirement in OSH Regulations or in the MSI Regulations. If adopted, the model will reduce the flexibility of employers to recruit workers from interstate and will unnecessarily add costs, by requiring the person to be reassessed in Western Australia.

Comment no.	Provision / Recommendation in Consultation Package	Provisions of the model WSH regulations affected	Comment
22.	HRWL can be renewed up to 12 months after their expiry date, or in exceptional circumstances	101(4); 102; 103	Although this provides a shorter renewal period than under OSH Regulation 6.9(1), allows a 24 month grace period, CME considers that 12 month is an appropriate period of time to review a HRWL, and is supportive of the flexibility for exceptional circumstances.
23.	HRWL is required for mobile and static concrete placing booms	5; Schedule 3 Item 22; Schedule 4; Items 22.	This proposed regulation extends the requirement to hold a HRWL to static concrete placing booms. Transitional arrangements will be required for this adjustment.
24.	Two classes of HRWL for boilers – standard and advanced	Schedule 3, Item 26 and 27	<p>It is proposed that the classes of high risk work licence to operate boilers be consolidated from 3 (basic, intermediate, advanced) to 2 (standard, advanced). This will mean only people with an 'advanced' license will be able to operate boilers that are capable of being fired by multiple fuels simultaneously, whereas an intermediate boiler could previously do this.</p> <p>Provisions are required to transition existing holders of the HRWL class for advance pressure equipment operation to advanced boiler operation, and to transition those holding a basic and intermediate license to a standard one.</p>
25.	Permit the current holders of HRWLs for the basic and intermediate pressure equipment operation to be able to renew their HRWLs under the WHS regulations.	Schedule 3 new items.	Please refer to comments in the row above.
26.	No specific provision on retention of HRWL records.	N/A	The OSH Regulations require a registered training organisation (RTO) to retain records for 5 years after the date of an assessment. This is used to support the audit of HRWL assessors. CME support the inclusion of a HRWL record retention requirement for RTOs.
27.	Feedback is sought on whether the defined terms in Part 4.7 (Electrical safety in workplaces and energised electrical work) should be substituted with the defined terms from the <i>Electricity (Licensing) Regulations</i>	144; 145; 146	DMIRS has observed in the Consultation Package that if the model is adopted, there is the potential for inconsistency with electrical safety legislation. CME's preferred option is to retain the current Western Australian legislative requirements noted in the <i>Electricity (Licensing) Regulations 1991 (WA)</i> and modify the Model WHS Regulations accordingly.

Comment no.	Provision / Recommendation in Consultation Package	Provisions of the model WSH regulations affected	Comment
	1991, or whether the model should be adopted.		
28.	Power to suspend an authorisation where there is an imminent, serious risk to health and safety.	110; 524	CME considers that this power is unnecessary and duplicative, as a prohibition notice may be issued under r 195 in these circumstances. There is no equivalent to this proposed regulation in the MSI Regulations or the OSH Regulations.
29.	Requirement to make certain records available for inspection.	94; 124; 226(3); 230; 237(4); 262; 303(4); 304(5); 313(4); 445(4); 465(3)(b); 505.	<p>These provisions relate to training records associated with HRWLs, plant, safe work method statements, excavation work, WHS management plan and asbestos work.</p> <p>As regards document retention requirements, if adopted, consideration should be given to whether the retention period should be aligned with the period in which a prosecution might be brought (ie 3 years) instead of 5 year retention period currently in the Model WHS Regulations, to ensure that duty holders can defend any prosecution that may be commenced where the records may assist in defending the prosecution.</p> <p>The retention period for a WHS management plan after a notifiable incident is only two years, which also does not align with prosecution timelines.</p>
30.	Restriction on working an unsafe distance from overhead or underground power lines.	166	CME observes that this regulation is less prescriptive than r 3.64 of the OSH Regulations, which include specification of safe distances and control measures (including the definition of 'danger zone'), and r 5.28 of the MSI Regulations, which cross refer to Australian Standards. The model provision also does not deal with safe distances for underground power lines, as the current regime does. Whilst CME is supportive of a risk based approach, there should be measures in place to clarify whether it is intended that the existing standards will inform risk assessment going forward.
31.	Roll over protection structure (ROPS) required for tractors with a mass of less than 560 kilograms; and 15,000 kilograms or more.	216	CME supports this regulation. While this threshold is lower than in r 4.45 of the OSH Regulations (defined as less than 800 kilograms; and more than 1500 kilograms), this new requirement is consistent with WorksafeWA 2014 Guidance Note on Powered Mobile Plant, which recommends the installation of ROPS on tractors < 560kg.
32.	Requirement for a professional engineer or person deemed as competent by the regulator to conduct major inspections	235(4) and 235(5); 241(5) and 241(6)	CME considers that it would be preferable to replace the phrase 'professional engineer' with a competent person that 'has acquired through training, qualification or experience the knowledge and skills to carry out the task'. Competency would be determined by the PCBU (e.g the SSE), not the regulator, as is currently the case under r 4.37 of the OSH Regulations.

Comment no.	Provision / Recommendation in Consultation Package	Provisions of the model WSH regulations affected	Comment
	of cranes and amusement devices.		<p>This approach would seem to provide more flexibility than the model provision, and aligns with current practices for transition purposes. Further, in Western Australia there is no law that provides for the registration of professional engineers (the jurisdictional notes acknowledge there are differences in this regard). Another option is the NSW approach, which lists various recognised accreditation mechanisms for engineers.</p> <p>For completeness, CME notes that r 6.40 of the MSI Regulations requires plant (including cranes) to be inspected at prescribed intervals by an inspector or another person approved in writing by the State mining engineer as a fit person to inspect the plant. Allocating the competency assessment to the SSE over the regulator is a departure from this framework.</p>
33.	Requirement for the inspection of registered mobile cranes or tower cranes to be carried out with reference to the end of design life recommended by the manufacturer, or the recommendations of a competent person every 10 years.	235	<p>CME considers that a potential inspection frequency of 10 years is too long to ensure the safe operating condition of plant is maintained. OSH Regulation 4.54 provides for inspection in accordance with manufacturer instructions, written instructions from Commissioner or AS 2550. Schedule 3 of the MSI Regulations requires inspections at more regular intervals (2-4 years).</p> <p>It would be preferable to maintain the approach under the OSH Regulations to ensure safety standards are not diluted.</p>
34.	Requirements for the storage of amusement devices and passenger ropeways.	239	Requirements for storage of plant more generally are provided in regulation 207. This is duplicative, and on this basis CME opposes its adoption.
35.	Construction projects require the appointment of a principal contractor with additional duties. Construction project is defined by a monetary threshold of \$250,000 or greater.	292.	<p>While a monetary threshold is not necessarily representative of the complexity of the project, CME sees the benefit in a nationally consistent position. Further, this approach may provide greater clarity, and have a positive effect on small builders. CME observes that South Australia amended its WHS Regulations to raise the threshold to \$400,000 following its independent review in 2015. Western Australia should consider whether the quantum of \$250,000 would cast the net too broad in this jurisdiction in light of this change.</p> <p>Under the MSI regulations, there is no equivalent concept of a principal contractor. Rather, r 4.21 requires appointment of a responsible person and supervisors for construction work. OSH Regulation 3.142 applies to construction work requiring a principal contractor as work involving more than 5 people working at the same time.</p>

Comment no.	Provision / Recommendation in Consultation Package	Provisions of the model WSH regulations affected	Comment
			<p>Whilst CME is not opposed to a monetary threshold, the proposed regulation may create a new framework for mining businesses to comply with, which may require a transitional period because businesses may have to change current systems.</p> <p>CME also considers that regulations on construction work should expressly not apply to the mining industry. These provisions may be unduly onerous with respect to maintenance work at mine sites, and duplicative in light of the existing MSMS requirements.</p>
36.	A person who has completed general construction induction training may apply to the regulator for a card. Jurisdictional notes recognise some jurisdictional have an alternative approach to issuing cards.	Part 6.5 and related definitions	<p>CME does not oppose this regulation, but notes that under Division 11 of Part 3 of the OSH Regulations, the RTO that conducted the training may issue a card. WorkSafe has no authority to cancel a card and replacement cards are issued by the RTO. There is a system of mutual recognition of construction induction training cards. The new regulation re-allocates responsibility from the RTO to the regulator.</p> <p>There is no equivalent regime to this in the MSI Regulations. This regulation therefore creates a new framework for mining businesses to comply with. This will create an associated cost for mining companies, as the construction company is likely to include the additional administration activities into their pricing structures. Transition requirements should account for this.</p>
37.	Requirement for containers (as defined) to be labelled in accordance with the Global Harmonisation System (GHS) labelling	342	CME observes that the definition of containers is broad, and may overlap with placarding requirements in DG legislation. CME recommends that the definition of container is focussed on smaller containers, to avoid duplication. Please refer to the body of this submission for detail.
38.	Provisions for hazardous chemicals in relation to the requirements for emergency and safety equipment.	360; 362	CME considers there is potential for duplication with r 73 and 74 of the <i>Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007</i> .
39.	Supervision in relation to hazardous chemicals.	379	CME considers there is potential for duplication with Part 4, Division 2, Subdivision 6 of the <i>Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007</i> .
40.	Duty to provide a health monitoring report to the regulator is on a PCBU	376; 413; 442.	CME observes that OSH Regulation 5.24 and MSI Regulation 3.31 place this obligation on the medical provider, not the employer. Notwithstanding this, CME is supportive of the new regulation in the interests of national consistency.
41.	Ability of PCBUs to provide a health monitoring report to	377; 414; 443.	This proposed regulation may pose privacy concerns for workers. OSH Regulation 5.23(4) and MSI Regulation 3.38 requires this to be kept confidential.

Comment no.	Provision / Recommendation in Consultation Package	Provisions of the model WSH regulations affected	Comment
	PCBUs with a corresponding duty.		
42.	Silica is restricted to a concentration of less than 1% for blasting	382; Schedule 10, Table 10.3	Silica is restricted to a concentration of less than 2% under Schedule 3.2 and 5.2 the OSH Regulations for toxic paint substances and blasting respectively, and 5% in r 9.9(2) of the MSI regulations for blasting. The proposed regulation may have an unintended impact on costs relating to the need to use abrasive blasting materials with lower silica content.
43.	Requirement to provide and maintain in good working order changing rooms and washing, showering and toilet facilities to prevent lead contamination	399(1)	These requirements are specific to the management of lead in the workplace and are key controls to prevent the ingestion of lead into the body. There is no specific equivalent to these requirements in current OSH or MSI Regulations but businesses working with lead likely already have these controls in place already. Introduction of a specific requirement may heighten the regulation in this area, and have an impact on remote work. However, overall CME does not oppose this.
44.	Prescribes licensing requirements (Class A and B), and requires assessors to be licensed, and trained via an accredited VET course	Part 8.10; 460; 493; 498; 499	CME does not oppose the inclusion of these regulations. However, a clear transitional process is required if these regulations are adopted, as they are different to what is currently in place. Under the OSH Regulations, licenses are divided into restricted and unrestricted. The Commissioner must be broadly satisfied of capabilities of license holder. The Commissioner has approved various training courses. Licensing is not required for assessors, the requirement is merely to be a competent person. The MSI regulations require compliance with the Code of Practice for the Safe Removal of Asbestos” 2nd Edition. That Code effectively applies the licensing requirements under the OSH regulations to mining workplaces.
45.	Requirement for asbestos removalists to have a certified safety management system	493(1)	CME opposes the inclusion of this regulation. The OSH Regulations currently require applicants for an unrestricted license to provide an asbestos removal work procedures manual. This also applies to mining workplaces. The proposed regulatory requirement to have a certified safety management system would create additional ongoing regulatory burdens, and increase costs for mining businesses. The safety outcome achieved by this additional regulation is not clear.
46.	Asbestos register is required for buildings constructed prior to 31 December 2003	425	CME does not oppose this requirement, but transitional requirements must be provided for given it is a departure from existing requirements for general workplaces. Buildings built after 31 December 1990 do not require an asbestos register under the OSH Regulations. The MSI Act requires a register to be kept and maintained at the mine of hazardous substances used or produced at the mine. Further the regulations require compliance with the Code of Practice for the Safe Removal of Asbestos, 2nd Edition, section 9.3 of which requires a person to maintain a register of all asbestos on the premises.

Comment no.	Provision / Recommendation in Consultation Package	Provisions of the model WSH regulations affected	Comment
47.	Requirement for decontamination facilities	471; 483	CME does not oppose inclusion of these regulations, provided they are qualified by the inclusion of the word 'appropriate' as regards the facilities.
48.	Requirement for asbestos removal control plan.	464	CME considers that this overlaps with requirements for safe method statement for high risk work. It is preferable to clarify that a safe work method statement is not required for asbestos removal where there is a compliant asbestos removal control plan in place, to avoid burdensome risk assessment requirements.
49.	Requirement to notify regulator if fibres will exceed 0.02 fibres per ml. Regulator can take action if threshold is exceeded.	476	CME does not oppose the inclusion of this additional notification requirement.
50.	Requirement to notify persons in surrounding area about asbestos removal work	468	CME recommends that this regulation be confined to other PCBUs. The current Code of Practice only requires consultation with adjoining properties that might be affected, and by removal only.
51.	Review of decisions under Act – submissions sought on period to seek external review.	701	OSH Act allows 7 days for requesting a review of improvement and prohibition notices. The MSI Act allows 7 days for referral for review of a prohibition notice, and whatever time is specified in the improvement notice as the time for referral for review of an improvement notice. CME continues that this time period should be at least preserved or ideally extended to 14 days to provide PCBUs sufficient time to digest decisions and formulate appropriate response. A period of 7 days can be very tight if legal advice and internal discussion is required in a large PCBU.
52.	List of laws prescribed for the purpose of providing information that is necessary or convenient for the administration or enforcement of another Act.	702	The list of laws that is proposed be included for the purpose of information sharing is extensive. Further clarity is required on how this information will be used.
53.	More extensive record keeping requirements in respect of general records, asbestos and health monitoring records	77(2); 85(4); 162; 303(2); 304(6)(a); 445(3)(b); 461(1)(b); 50; 378(1)(b);	<p>The proposed regulations require asbestos health monitoring records to be kept for 40 years (r 444(1)(b)), rather than 30 years under the OSH Regulations. CME considers it would be preferable to stay consistent with the approach under the OSH Regulations.</p> <p>CME considers that the requirement to retain the following for a five year period after a worker ceases working is excessive:</p>

Comment no.	Provision / Recommendation in Consultation Package	Provisions of the model WSH regulations affected	Comment
		388(3); 418(1)(b); 444(1)(b)	<ul style="list-style-type: none"> asbestos worker training record (r 445(3)(b)); and Licensed Asbestos Removalist training record (r 461(1)(b)) <p>Retention of training records falls primarily on an individual. An organisation should not be required to keep them for more than three years.</p>
54.	Proposed deletions to the Model WHS Regulations to remove overlap with the <i>Dangerous Goods Safety Act 2004 (WA)</i>	336; 347; 348; 349; 350; 354; 361; 364; 366; 367; 389; 390; 391	<p>CME is supportive of this proposal as it removes duplication between WHS and DG requirements. However, there is the potential to simplify the two regimes further, by ensuring that there is no unnecessary overlap. For example:</p> <ul style="list-style-type: none"> the obligation under clause 344 of the Model WHS Regulations (the duty of a PCBU to obtain safety data sheets) appears to be a very similar requirement to clause 77(2) of the <i>Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007 (WA) (DG Storage and Handling Regulations)</i>; and the obligation under clause 359 of the Model WHS Regulations (fire protection and fire fighting equipment) appears to be very similar to the requirements of clause 73 of the DG Storage and Handling Regulations.
55.	Include a new part that replicates the requirements of r 3.130 to 3.134 of the OSH Regulations – Driving commercial vehicles.	New provisions.	CME opposes the proposal to retain the OSH Regulations for commercial vehicle drivers. It is preferable for this area to be managed solely by specialist road traffic legislation. This will better facilitate continuous improvement of legislation in that area.
56.	Include the OSH regulations for protection from tobacco smoke (r 3.44A to 3.44I).	New division.	The proposed inclusion retains the requirements of the OSH Regulations in relation to smoking. Current regulations do not deal with a scenario where, when permitted by an employer, a person may smoke in designed areas of accommodation provided by the PCBU for which the worker works. It would be helpful to clarify that this is outside the scope of the regulations
57.	Proposal to include a requirement similar to regulation 3.62 of the OSH regulations specifying when electricity is to be connected to a construction site.	New provision.	It is not clear what the drafting of this amendment is. Clause 3.62 of the OSH Regulations does not refer to the connection of electricity to a construction site. This regulation deals with requirements of portable electrical equipment. We assume that the reference should be to clause 3.65 of the OSH Regulations. Further consultation should be sought when the proposed provision is clarified.

Appendix II: Work Health and Safety (Mines) Regulations

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
58.	Definition of mine / mine operator	1; 3 (M7 and M8 of NMSF)	Changes are required to clarify this definition as regards off site activities (e.g ROCs), fixtures, airstrips, excluded activities and things 'in the vicinity of' a mine. Please refer to the body of this submission for detail.
59.	Requirements to notify the State Mining Engineer of commencement, suspension and closure of mines. It is also proposed approval is required for a 'substantial change'.	4 -7 (M14 – M18 of NMSF)	CME supports the risk based approach to the notification requirement for substantial change. NMSF M18(2) appears to require a separate notification to the regulator, stating that exploration operations have completed. This could create a large additional administrative exercise if a separate notification is required at the conclusion of every exploration programme. CME do not consider that M18(2) is needed, provided the notification of commencement includes a proposed conclusion date.
60.	Definition of supervisor. Current definition excludes staff in 'administrative offices'	No topic (M6 of NMSF)	Definition of 'supervisor' is broad and should be confined. It should be amended to clarify supervisors in an ROC are not captured under the Regulations. Please refer to the body of this submission for detail.
61.	Additional risk management and control regulations to Part 3.1 of Model WHS Regulations Risk assessments must be conducted by a competent person who is competent to conduct the particular risk assessment having regard to the nature of the hazard for the purposes of subregulation (1).	8 (M19 to M22 of NMSF)	CME supports this drafting and observes that it is important that the concept of 'competent persons' is flexible 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.
62.	Mine operator of a mine must ensure that a control measure that is the subject of a request by a health and safety representative under WHS Regulation 38(4) (asbestos) is reviewed and as necessary revised	8 (M20 of NMSF)	There is no equivalent to this in the MSI Regulations. CME considers that this change would excessively expand HSR powers, and may create an operational burden.

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
63.	A PCBU (other than the mine operator) must keep records of their review of a control measure in response to a notifiable incident.	M22 of NMSF (not in DMIRS table)	CME considers that it is important to add in a provision that requires the PCBU to promptly provide records of their review to the mine operator.
64.	Introduction of a Mines Safety Management System	9 (M23-M27 of NMSF)	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. Please refer to the body of the submission for detail.
65.	Content of the Mines Safety Management System	9 (M24(1) of NMSF)	<p>CME supports the risk based approach to management and supervision as a component of the MSMS. Some detail will be required on persons performing statutory functions, competency requirements, requirements for acting positions and arrangements for filling vacancies in the MSMS.</p> <p>It would be helpful to replace the description of the MSMS in M24(1) as a 'document' with the word 'system'. This will provide flexibility for PCBUs to embrace technology and implement the MSMS as a system that users can interface with, rather than as a document which, taken on its plain meaning, does not have the capability to be as sophisticated.</p>
66.	A contractor must operator under the MSMS or under their own developed safety management system approved by the mine operator.	9 (M24(1)(g), M29-M32 of NMSF)	<p>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.</p> <p>Further, clarity is needed that, where a contractor is undertaking specialist tasks which are outside the expertise of the mine operator, the mine operator is not required to approve the work methodology of the contractor.</p> <p>Please refer to the body of this submission for detail.</p>

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
67.	Requirement to consult with workers on development, implementation and review of MSMS, identifying hazards and conducting risk assessments for PHMP and preparing, testing and reviewing the emergency management plan	9 (M27A of NMSF)	<p>Clarity is needed on the meaning of ‘consultation’ so worker’s views are taking into account, but without the ‘agreement’ of workers or the need to achieve the ‘consensus’ of workers (or their representatives). Particular as there is authority in the industrial context that has implied genuineness requirements into general consultation obligations in Awards and legislation.</p> <p>It is important 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.</p>
68.	Requirement to establish, maintain and implement a MSMS when work is performed by contractors at a mine.	10 (M23-M32 of NMSF)	Please refer to comments above and in the body of the submission for the CME’s position on contractors and the MSMS.
69.	Principal Hazard Management Plan (PHMP)	11 (M33-M35 of NMSF)	<p>It is proposed a number of principal hazards will be prescribed for the purposes of PHMPs, as matters the mine operator must have regard to. CME does not support this approach. Prescribing principal hazards is inconsistent with the risk-based approach taken by the legislation in a number of other areas.</p> <p>Mine operators are well placed to identify the hazards at a mine, to assess the risk arising from those hazards and to implement adequate controls. Insofar as guidance is preferable for a confined group (i.e small operators) this should be dealt with in DMIRS guidance material.</p>
70.	Design life of geological structures	M39(3)(e) of NMSF (not in DMIRS table)	It would be useful if DMIRS could clarify what is meant by ‘design life’ for these structures. For example, how does a fault or bedding plane have a design life?

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
71.	Exclusion of Principal Control Plan (PCP)	12	CME does not oppose this regulation. There is no specific clause in MSI Act or MSI Regulations defining principal control plans. However prescriptive regulations cover emergency preparation (r. 4.23-4.37), use of electricity in mines (Par 5, r.5.1-5.32), use of explosives (Part 8, r.8.1-8.60), underground ventilation (Part 9), Health surveillance (r. 3.21-3.42) and use of machinery (Part 6).
72.	Regulator must be given a prior notice of specified high risk activities. Schedule 2 provides the list of these activities, required notice period and details to be provided in the notice.	13 (M43 and Schedule 2 of NMSF)	Requirement to notify a 'major change' with autonomous and semi-autonomous equipment overlaps with requirement to notify a 'substantial change' in M14 of the NMSF. It is administratively burdensome and unnecessary to have both of these notification provisions apply to remote or autonomous operations (or if they are intended to be different, that distinction should be clearly articulated). Please refer to detail on this in the body of this submission.
73.	Operation of autonomous plant – definitions	13 (read with M42 of NMSF)	Terminology requires refinement. Please refer to comments in the body of this submission.
74.	Operation of autonomous plant – risk management	13 (M42 of the NMSF)	Generally, duties are described around managing risks so far as is reasonably practicable (SFAIRP) however M42 requires ensuring the operation is 'without risks' SFAIRP. Risk management is about managing risks not removing them entirely. High risk activities will never be 'without risk'. This should be amended to require risk management SFAIRP.
75.	Duties of Site Senior Executive	13	Amendments required to ensure that SSE's do not assume responsibility for the procedures at the ROC. This would be inappropriate given their limited practical control of ROCS, and duties under general OSH Regulations. Please refer to the body of this submission for detail.

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
76.	Requirement for supervisors to provide a written report at shift changeover to their counterpart in relation to the state of the mine, workings and plant and any other matters that relate to work health and safety, and that the incoming supervisor communicate this to workers	14 (M36 of NMSF)	Requirement that the report be written, and contain certain content is inflexible and does not account for varying shift changeover procedures that are in place to manage remote work and commute schedules. Please refer to the comments in the body of this submission for detail.
77.	Specific regulation on each of the hazards associated with mobile plant, inrush and inundation, geotechnical instability and quarry operations.	15 (M37-M40 of NMSF)	CME considers that M38(2)(d) on inrush and inundation hazards should be removed. The need to calculate maximum flow rate is largely redundant under current risk management frameworks. If an inrush hazard has been identified that can result in multiple fatalities then it is implied that the flow rate and volume of material is sufficient for the mine operator to need to implement controls or eliminate the inrush hazard completely. Prescribing this as a specific hazard in this way could cause people to re-orientate their focus to implementing measures which would reduce flow rates in an inrush event, which should not be the intent. Rather, the preference is to eliminate the occurrence or remove people from the line of fire.
78.	High risk activities	NMSF M43 (not in DMIRS table)	CME has the following comments on specific high risk activities in M43: <ul style="list-style-type: none"> The waiting period for the use of explosives in reactive or hot ground of 15 days is onerous and will potentially increase risk. For example, for open drill holes in reactive ground. CME considers that a waiver or reduction of the waiting period in these instances would be appropriate. For example, if a single waiver/exemption were granted the first time that a PCBU encounters the hot or reactive ground, which could then apply every time it is subsequently encountered. The waiting period for the introduction of autonomous or semi-autonomous mobile equipment

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
			<p>or production drilling equipment (including making a major change) of three months is impractical. CME considers a waiting period of one month is more appropriate.</p> <ul style="list-style-type: none"> The inclusion of single entry development beyond 200m from through ventilation as a high risk activity is likely to impact a large number of ore drives at certain mining operations, which may cause production delays and require additional costly ventilation infrastructure (estimated at over \$100,000). This change is unnecessary to manage safety risks: the risks associated with these activities are effectively managed by minimum ventilation requirements, emergency requirements and two means of egress. The scope of 'dam' and 'slurry' within the high risk activity of 'construction of a dam or plug to store water or slurry' is unclear. It would assist if those terms were separately defined in the regulations.
79.	The application of Dangerous Goods legislation is proposed as well as managing hazards associated with explosives in accordance with Part 3.1. A list of matters that are to be considered by the mine operator is provided in Regulation M41.	16 (M41 of NMSF)	<p>CME does not oppose this amendment, but would like to make some points on ways this regulation could be clarified.</p> <p>First, M41(2)(c) refers to 'safe lighting in and around magazines and where explosives are prepared and used'. It would be useful if DMIRS could clarify what is considered to be safe lighting (for example headlights on vehicles, cap lamp) via guidance material under this section.</p> <p>Second, M41(2)(k) lists the following as a matter to be regarded in managing risks to health and safety associated with the storage, transportation, use and disposal of explosives: 'precautions against unintended detonation including precautions against electric storm, leakage of electric current, electrostatic charge, and</p>

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
			electromagnetic radiation'. CME proposes replacing electric storm with 'lightening or electrical storm', and leakage of electric current with 'electrical current'.
80.	Prohibited items in underground mines.	17 (M44 of NMSF)	<p>CME requires clarity on this regulation. In particular, M44 and Schedule 3 on Ignition Sources are unclear: the language in column 2 appears to be unfinished. It is also unclear how the restrictions at the top of page 96 work, because the two columns are merged. Consideration should be given to re-drafting these sections to make them more user friendly.</p> <p>CME also notes that its members currently use refuge chambers that rely on oxygen candles once all mine air or O2 cylinders options have been used. While the ignition is contained, it is not clear whether this will be permitted under M44. It would be helpful if this could be clarified.</p>
81.	Minimum age for quarry and underground mine operation.	18 (M45 of NMSF)	CME does not oppose this regulation.
82.	Management of electricity	19 (M48-M52 of NMSF)	CME does not oppose this regulation.
83.	Air quality and monitoring at mines.	20 (M53-M57 of NMSF)	This is an example of duplication with regulation 49 in the WHS (General) Regulations, which deals with managing risks from airborne contaminants. CME recommends that only the NMSF standard be applied to mines.
84.	<p>Where radiation exposure crosses the prescribed threshold, it is proposed that additional provisions from the MSIR will be retained.</p> <p>The radiation management plan will need approval from the Regulator/CIM.</p>	21 (M60-M72 of NMSF)	It would be useful DMIRS could confirm whether delegate Radiation Safety Officers have to now hold a fixed gauge radiation license, or only the SSE (Nominated Radiation Safety Officer).

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
85.	Requirement to manage health and safety risks associated with worker fatigue and the consumption and use of alcohol and drugs by workers.	22 (M75 and M76 of NMSF)	Risk management requirement should be qualified with so far as is reasonably practicable, and confined to matters within the control of the mine operator. As drafted, it arguably applies a higher standard to manage all risk.
86.	Requirement to manage risk in relation to connecting workings, dust explosion, and fire risk.	23	CME does not oppose this regulation.
87.	Principal hazards associated with winders and shaft sinking will be managed by implementing a PMHMP. Three provisions will replace current 108 regulations. Approval for installation of a winder and sinking of a shaft will be replaced by a notification.	24 (M81-M83 of NMSF)	CME does not oppose this regulation.
88.	It is proposed that a number of regulations are introduced to cover hazards associated with air quality and ventilation.	25 (M86-M98 of NMSF)	M87(1)(a) requires the ventilation system to ensure air has an oxygen concentration of at least 19.5% under normal atmospheric pressure. CME's position is that this needs to say '19.5% by volume', otherwise the statement is too arbitrary.
89.	Requirement to manage hazards associated with use of diesel units in underground mines.	26 (M84-M85 of NMSF)	M84(1)(b) requires a mine operator the ensure that the diesel unit is maintained as per original equipment manufacturer specifications for use in underground. CME considers that this needs to be limited to maintenance specifications which have a health and safety purpose (for example, as opposed to specifications which are for a productivity purpose). Further, this provision should allow flexibility for mine operators to apply a maintenance strategy that achieves the same health and safety outcomes in a different way.
90.	Requirements for underground ventilation control plans	M93(3)(i) of NMSF (not in DMIRS table)	M93(3)(i) requires an underground ventilation control plan to describe (if applicable to the mine) 'arrangements for an alternate and independent way of operating the main ventilation fan system in the event of a loss of power supply to the main ventilation system'. Clarity is

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
			sought on whether this applies to hard rock underground mines. CME considers it does not need to include these mines because refuge chambers and emergency management procedures in underground hard rock mines are effective to manage the relevant risks.
91.	Consultation requirements when preparing emergency management plans	M100 of NMSF (not in DMIRS table)	CME considers that the requirement in this clause will be an issue for remote sites. Member mining operations may be 200 – 300 km away from any fire service, and even then they are only volunteer fire stations. CME suggests that the wording be amended to reflect that consultation is only needed where there is going to be a likely response from a government fire service (cross referring as appropriate to recognised language in emergency legislation).
92.	Requirement to train workers on emergency management plan when they commence work and when the plan is revised	27 (M106 of NMSF)	CME does not oppose this regulation.
93.	Underground mines	28 (M107-M112 of NMSF)	CME does not oppose this regulation.
94.	Information, training and instruction for all mines.	29 (M113-M118 of NMSF)	<p>CME queries whether M114 is needed, given model WHS regulation 39 covers the same subject matter. This is another example of duplication.</p> <p>CME considers M114(2)(a) to be too broad. Whilst the mine operator should provide training/ information to the individual on the scope of work and the nature of the risks, it is important that the individual also conduct a risk assessment and identify additional hazards and/or changes to the task (for example hazards that arise during a task).</p> <p>CME observes that M118(b) (training records to be kept while a person is engaged at a mine) does not appear to be consistent with model WHS regulation 445. The first requires records to be kept while the worker remains</p>

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
			engaged, and the latter requires records to be kept for an additional 5 years. Even if consistent, it is an example of the structural difficulties of containing similar compliance requirements across two instruments for mining.
95.	Mine survey plans	31 (M132-M134 of NMSF)	<p>The NMSF mine survey provisions assume that a person will carry out a survey. It is not clear whether that is flexible enough to include surveys via drones. In future, many companies may not engage a person to carry out the actual survey. It may be managed from the remote control room. The regulation should be broad enough to encompass this scenario.</p> <p>M131(2) provides, ‘the mine operator of a mine must, in addition to the plans prescribed in sub-regulation 1, maintain additional survey plans that are determined to be necessary based on assessment of risk carried out in this regard.’ This regulation does not clearly allocate responsibility over determining whether additional survey plans are necessary. If the intention is that the regulator determines this, it could create significant additional work and allocation of resourcing. CME recommends that the mine operator have this discretion.</p> <p>M132(3) provides, ‘a person who carries out a survey at a mine must ensure that (a) the survey is carried out using instruments and equipment of precision equal to best current industry standards and technology’. CME considers that this requirement may be very costly to comply with, for potentially little or no safety benefit. A better way to frame this requirement would be to use the language of, ‘the survey is carried out using <u>fit for purpose instruments and technology.</u>’</p>
96.	Proposed to retain statutory positions with prescribed qualifications and experience. Roles include requirements for Site Senior Executive (SSE); Exploration Manager;	32 (M135 and 136 of NMSF, Schedule 8)	CME has concerns with the prescription required in this section. Please refer to the body of this submission for details.

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
	Underground Manager; Quarry Manager; Surveyor; Winding Engine Driver; Underground Supervisor; Supervisors; Electrical Supervisors; High Voltage Operator; Ventilation Officer; Noise Officer and Radiation Safety Officer. Certification is unnecessary.		Also, for exploration operations, there are currently two statutory positions: Exploration Manager and On-Site Person Responsible for Exploration Operations, which may or may not be the same person. The NMSF appear to merge these roles into one. It would be useful if DMIRS could clarify that this is its intent.
97.	Biological and health monitoring	30 (M119 to M130 of NMSF)	CME does not oppose these regulations.
98.	Appointment of statutory positions must be made by the mine operator. The mine operator may authorise the SSE to make this appointment	33 (M136 and M137 of NMSF)	CME supports the approach of the SSE having responsibility over statutory appointments, though noting that this remit may be administratively challenging if the role of supervisor is not confined in a similar way to s 44 responsible persons under the MSI Act.
99.	Compliance with statutory functions	34 (M138 and M139 of NMSF)	CME is supportive of the proposed risk based approach to management and supervision.
100.	Mine Records	35 (M142 to M145 of NMSF)	CME considers that requirements to keep records are too prescriptive (see M142(2)). As noted above, the requirement to retain the written reports exchanged by supervisors under M36 at shift handover has the potential to be administratively burdensome, and practically difficult to enforce.
101.	Reporting to the regulator	36 (M146 – M149 of NMSF)	<p>It would be appropriate for certain protections to be included in this section that information provided in such a report cannot be used against the SSE, other workers, or the mine operator.</p> <p>CME also considers that the definition of 'high potential incident' needs to be refined, and aligned to incident reporting under the WHS Act.</p> <p>Please refer to the body of this submission for further detail.</p>

Comment no.	Recommendation in DMIRS Comparison table in Consultation Package (read with National Mines Safety Framework Regulations (NMSF))	Topic no. in DMIRS Comparison table / NMSF	Comment
102.	Exemptions	37	It is proposed that provisions similar to WHS Regulations will be provided. It should be clear that existing exemptions will be grandfathered.
103.	A number of transitional arrangements are proposed for Chapter 10, Division 6 to allow for a phased introduction of certain requirements in the WHS (Mines) Regulations.	38 (Schedule 9 of NMFS)	Timeframes range from 6 months to 2 years. The transition timeframes relevant to statutory positions are 2 years, and for the mine safety management system (MSMS) 1 year. The time to implement the MSMS requires duty holders to significantly rework existing safety management systems and have completed specified training. CME is generally supportive of the transition periods, but recommends that a period of 2 years is prescribed for implementation of the MSMS.

Appendix III: WHS (Petroleum and Geothermal Energy Operations) Regulations

Comment no.	Recommendation in Discussion paper on PG Regulations in Consultation Package	Ref in Discussion paper	Comment
104.	Requirement to have a registered operator that has day-to-day management and control of the operation	p. 6; 16; 20	Under the PGEO Proposal, the operator is required to be a single body corporate or a natural person, it cannot be an informal affiliation of companies e.g an unincorporated joint venture. CME seeks clarification that the regulations are intended to scope out these kinds of entities, which are common in the PGEO industry.
105.	Definition of Major Accident Event will be extended to an event that has the potential to cause multiple fatalities to workers 'and other persons'	p. 6	Presently, a major accident event is defined as an event that has the potential to cause multiple fatalities to persons 'engaged in the operation and other protected persons'. CME considers that this needs to be confined to matters that are lawful and in the operator's control.

Comment no.	Recommendation in Discussion paper on PG Regulations in Consultation Package	Ref in Discussion paper	Comment
106.	Design case	p. 7	CME supports this proposal, provided that the review continues to be optional.
107.	Application of r 68-73, 76B, 77, 78 and 79 of the <i>Dangerous Goods (Storage and Handling of Non-explosives) Regulations 2007</i> to all PGEO including pipeline operations	p. 7	CME does not oppose this proposal.
108.	Duties regarding the health and safety of people using accommodation supplied for the purpose of a PGEO (other than those off the licence area)	p. 7	CME does not oppose this proposal.
109.	Periodic reporting quarterly, with an additional requirement to report process lead/lag indicators	p. 7; 16; 20	CME does not oppose this proposal, but would like clarification on whether there will be prescription on how data is used by the regulator.
110.	Notifiable incidents under general WHS Regulation will apply, in addition to specific incidents in the PG Regulations. Some of these are carried across from existing laws. New notifiable incidents include a failure of a Safety Critical Element (SCE) on demand; failure of an SCE to danger; significant damage to primary containment.	p. 7	CME considers it would be appropriate to align the definition of notifiable incident with Commonwealth offshore petroleum legislation.
111.	Suspension of safety case at request of operator or where no operation is taking place, to remove requirement to pay the safety levy	p. 6	CME does not oppose this proposal.
112.	Extend the concept of “at” and “near” to all PGEO	p. 8	CME does not oppose this proposal, subject to obtaining further clarification on ‘at’ and ‘near’.
113.	Transition arrangement – safety cases submitted prior to the commenced of the PG Regulations will be considered against the old regulations	p. 8	Clarification is required on safety cases/reports to remain in force until due for renewal (either significant change or five-yearly review). Consideration should be given to a transition period that provides flexibility to operators if their renewal date falls very close to the commencement of the PG Regulations.
114.	Assessment period for safety case is 90 days for initial approval, and 30 days for a revision	p. 12	CME does not oppose this proposal as it aligns with Commonwealth offshore legislation. However, there is a

Comment no.	Recommendation in Discussion paper on PG Regulations in Consultation Package	Ref in Discussion paper	Comment
			risk that a 90 day period may inhibit construction works. A 60 day period would be preferable.
115.	An operator may not submit a safety case until the scope of validation for a pipeline has been agreed with the regulator	p. 21	CME does not oppose this proposal.