



Department of
Mineral and Petroleum Resources

**THE DEPARTMENT OF
MINERAL AND PETROLEUM RESOURCES'
SUBMISSION
ON THE
THE REVIEW OF THE
OCCUPATIONAL SAFETY AND HEALTH ACT 1984
CONSULTATION DRAFT**

MAY 2002

**MPR SUBMISSION ON THE REVIEW OF THE
OCCUPATIONAL SAFETY AND HEALTH ACT
CONSULTATION DRAFT**

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SUMMARY OF DEPARTMENT OF MINERAL AND PETROLEUM RESOURCES' PROPOSALS

Proposal 1

The Minister for State Development retains responsibility for the administration of the Explosives and Dangerous Goods Act 1961.

Proposal 2

MPR retain responsibility for the regulation of the Explosives and Dangerous Goods Act 1961, and its subsidiary regulations.

Proposal 3

The merger of the Mining Operations Division and the Explosives and Dangerous Goods Division within MPR be supported.

Proposal 4

OSHA is not expanded to cover public safety.

Proposal 5

Separate petroleum safety legislation is supported.

Proposal 6

Proclamation of the Petroleum Safety Act be given priority support.

MPR SUBMISSION ON THE REVIEW OF THE OCCUPATIONAL SAFETY AND HEALTH ACT CONSULTATION DRAFT

1.0 INTRODUCTION

The *Consultation Draft on the Review of the Occupational Safety and Health Act 1984* (the "Consultation Draft") was released to stakeholders on the 19 February 2002 for comment. All comments are due by 3 May 2002 direct to the reviewer, Mr Robert Laing. This submission contains the views of the Department of Minerals and Petroleum Resources (MPR) in relation to the Consultation Draft.

The views herein do not necessarily represent the views of the Minister for State Development, who has not been involved in its preparation.

2.0 RELEVANT RECOMMENDATIONS

Comment is provided on recommendations relating to explosives, dangerous goods and petroleum safety and health legislation and its administration. Specifically the following Consultation Draft recommendations are addressed:

Recommendation 58

It is recommended the capacity of the Commission to contribute to policy development on legislation dealing with occupational health and safety be extended through the prescribing of all relevant statutes (including the *Petroleum Safety Act 1999*) for the purposes of *s.14(1)(b)*."

Recommendation 60

It is recommended responsibility for the *Explosives and Dangerous Goods Act 1961* be transferred to the Minister for Consumer and Employment Protection.

Recommendation 61

It is recommended the explosives and Dangerous Goods Division of the Department of Minerals and Petroleum Resources be transferred to the department of Consumer and employment Protection as a dedicated and specialist division.

Recommendation 62

It is recommended steps be taken towards the eventual amalgamation of the *Occupational Safety and Health Act 1984*, *Mines Safety and Inspections Act 1994* and *Petroleum Safety Act 1999* into a single statute with separate divisions for each activity. This recommendation should be concluded in conjunction with relevant recommendations of the report of the review of the *Mines Safety and Inspections Act 1994* and as outlined in Part 8 of this Report."

3.0 EXPLOSIVES AND DANGEROUS GOODS

The location of MPR's Explosives and Dangerous Goods Division (EDG), responsible for explosives and dangerous goods regulation, has been the subject of a number of reviews, over a number of years.

Departmental reviews were conducted in 1996 and 1999 and both recommended the Division remain within MPR.

The 1996 review concluded that the synergies between EDG and MPR was higher than with any other agency, including the Department of Consumer and Employment Protection (WorkSafe WA

Division), the then Department of Environmental Protection or the Fire and Emergency Services Authority.

The 1999 review found similarly, and this took into account the views of the wide range of stakeholders covered by this legislation. In addition, the 2001 Machinery of Government review supported EDG administration remain within MPR.

While it is recognised that synergies between EDG and WorkSafe WA are considerable, similar links exist between it and MPR's Mining Operations Division (MOD), whose jurisdiction extends to mining operations.

The effective administration of dangerous goods and explosives in the minerals industry benefits from EDG's placement within MPR. For example, EDG and MOD inspectors work closely in relation to the regulation of the storage, manufacture, import, sale and authorisation of explosives, and the inspection and approvals related to dangerous goods storage and handling. It could be argued that this is critical given the risk profile of the industry is significantly higher than that for other workplaces.

To reflect the synergies between EDG and MOD, MPR proposes to merge the two Divisions, and details and explanation are provided further in the *MPR's Submission on the MSIA Review Consultation Draft*.

For these reasons, MPR does not support Recommendation 60 and 61 of the Consultation Draft.

Proposal 1

The Minister for State Development retains responsibility for the administration of the Explosives and Dangerous Goods Act 1961.

Proposal 2

MPR retain responsibility for the regulation of the Explosives and Dangerous Goods Act 1961, and its subsidiary regulations.

Proposal 3

The merger of the Mining Operations Division and the Explosives and Dangerous Goods Division within MPR be supported.

The Consultation Draft also recommends that OSHA be expanded to cover public safety, although this is not supported by MPR¹. Although not a specific recommendation, the Consultation Draft also discussed the potential merger of OSHA with relevant public safety legislation, including that for explosives and dangerous goods.

The *Explosives and Dangerous Goods Act 1961* (EDGA) has been the subject of review in recent years and the Dangerous Goods Safety Bill (DGSB) is expected to be before parliament by August 2002. The DGSB will pick up national dangerous goods storage and handling standards, and this is a pressing issue with relevant stakeholders.

In addition, the new Act will then facilitate a review of its subsidiary *Explosives Regulations 1963*, which is a high priority for government and the industry.

Any attempt to review such legislation in the context of expanding OSHA to cover public safety (including explosives and dangerous goods regulation) is likely to mean significant delays in delivering the new Act and revised Regulations, and this can not be supported by MPR.

EDG is also responsible for the administration of the *Dangerous Goods (Transport) Act 1998*, which is largely concerned with public safety in relation to transport of dangerous goods on public roads.

¹ MPR (2002) *MPR's Submission on the Review of the Mines Safety and Inspection Act Consultation Draft*.

In Queensland the equivalent legislation is administered by the Department of Transport, and in NSW by the Department for the Environment, and not with agencies responsibility for administration of occupational safety and health.

It is no small matter to merge the OSHA with the explosives and dangerous goods legislation. Such a merger has been considered in detail in other States, with each opting to retain dedicated dangerous goods legislation.

MPR continues to support separate EDG legislation.

Proposal 4

OSHA not be expanded to cover public safety.

4.0 PETROLEUM SAFETY

Petroleum Legislation relating to Safety (and Occupational Health)

MPR's Petroleum Division administers petroleum operations in the Commonwealth offshore adjacent area, covered by the *Petroleum (Submerged Lands) Act 1967* (P(SL)A), as the Designated Authority of the Commonwealth-State Joint Authority. Petroleum facilities and operations are administered by MPR under the *WA Petroleum (Submerged Lands) Act 1982*, *Petroleum Act 1967*, and *Petroleum Pipelines Act 1969*.

Commonwealth Offshore areas are covered under the *P(SL) (Management of Safety)* regulations, which include a requirement for a Safety Case, and the *P(SL) (Management of Environment)* regulations, and includes the requirement for an Environment Plan. Both the Safety Case and Environment Plan require an assessment and mitigation of risks (and suitable management systems).

In addition, Schedule 7 of the Commonwealth *P(SL)A* applies the principles of OSH if the respective State/Territory OSH Act does not also apply. Schedule 7 does not apply if OHS is covered by State legislation (e.g. State OSH Act or *WA Petroleum Safety Act*). In WA petroleum sites and operations are specifically excluded from the scope of the *OSH WA Act*, therefore Schedule 7 applies. Although, this will change when the *Petroleum Safety Act 1999* (PSA) is proclaimed.

The PSA (and regulations currently being drafted) applies the Safety Case requirements of the P(SL)A and specifically the P(SL) (MoS) regulations, and also includes the OHS provisions of Schedule 7 of the P(SL)A (consistent with the *OSH WA Act*).

A significant advantage of the PSA is that it applies both the Safety Case and OHS requirements to all petroleum sites and operations under all State petroleum legislation.

Until the PSA is proclaimed, or the Commonwealth P(SL)A regulations are duplicated, OHS requirements are applied in the State areas by Schedules of Directions (The *Schedule of General Directions for OHS 1993*). The Safety Case requirement has also been introduced onshore since 1996 by condition of licence, condition of approval, or by agreement with the operator.

It should be noted that occupational health is an element of the Safety Management System (SMS) required under the Safety Case), and the SMS covers employee safety.

Implications of Laing Review Recommendations

Proclamation of the PSA will not occur until the regulations are developed and passed through Parliament. If the Consultation Draft recommendation to amalgamate the MSIA and the PSA with OSHA is supported, then it is likely that the PSA will not be proclaimed at all.

The PSA will also not be proclaimed until the regulations are developed and passed through Parliament. If the recommendation that these Acts be combined in the future, it is possible that the regulations could be opposed.

A further significant problem with the amalgamation recommendation is that OSHA does not provide for the Safety Case requirement, a well established, international standard for safety and health administration within the petroleum industry.

National Offshore Petroleum Safety Regulation

OSH administration on petroleum operations is the current national proposal to establish a National Offshore Petroleum Safety Authority (NOPSA).

WA has agreed with the Commonwealth proposal to review the feasibility of a Joint Commonwealth-State/ Territory NOPSA that would administer safety in both the offshore Commonwealth and State/ Territory waters. The implications for separation of safety from other regulatory functions (i.e. Environment, resource management, titles) will be considered as part of the review, which is expected to be completed by August 2002.

The legislative implications of a NOPSA, and the potential separation of the safety function from the offshore areas covered under the Commonwealth P(SL)A, the WA P(SL)A, and the *Petroleum Act 1967* (offshore sites and operations only), will be significant.

This may be particularly a concern the development and proclamation of the PSA, as the scope of the application would need to be limited to those areas not covered by NOPSA (i.e. Onshore) in a few years when the NOPSA (and other legislative changes) would be implemented. The development of a NOPSA would involve at least a 2-year development/ transition period. Therefore it would still be necessary to proceed with the proclamation of the PSA so that the Safety Case requirement could be applied in State areas (and particularly to Barrow Island which is currently not under any such legislation).

MPR considers that the global nature of the petroleum industry and the need to regulate on an "international level" only supports retention of the current regulatory and administrative arrangements.

As with the minerals industry, the inherent risks of petroleum operations warrant separate legislation and a dedicated inspectorate, and the jurisdictional issues of State and Commonwealth regions for petroleum operations only heighten the need for legislation separate to OSHA.

Given these issues, Recommendations 58 and 62 of the Consultation Draft are not supported

Proposal 5

Separate petroleum safety legislation is supported.

Proposal 6

Proclamation of the Petroleum Safety Act be given priority support.