



Ministerial Advisory Panel on Safety Legislation Reform

AGENDA

Date:	Wednesday 23 July 2014	Time:	8:30am – 10:30am
Venue:	Fraser Room 4, Fraser Suites - Level 1 10 Adelaide Terrace, East Perth		

Item No.	Item	Who
1.	Actions of previous meeting	Chair
2.	Safety Legislation Reform & restructure: status report & timeline	Lew Pritchard
3.	Regulatory Impact Statement: safety legislation consolidation options	Lew Pritchard
4.	Legislation section numbering – Model vs. consecutive	Lew Pritchard
5.	Risk Management Principles - feedback	Chair
6.	Issues for consideration	Chair
7.	Working group recommendations: <ul style="list-style-type: none">• Asbestos• Confined Spaces• Guarding	<ul style="list-style-type: none">• Greg Stagbouer• Kevin Wolfe• Richard Kern
8.	Other business: <ul style="list-style-type: none">• Future meetings	Chair
9.	Next Meeting: 24 September 2014 8:30 – 10:30am	

Information Papers:

- 1. Actions list
- 2A. Safety Legislation Reform & restructure status report
- 2B. Mines Safety Legislation reform timeline
- 3. Safety Legislation Consolidation Options
- 4A. Legislation section numbering: Based on Model (*to be tabled at meeting*)
- 4B. Legislation section numbering: Consecutive (*to be tabled at meeting*)
- 5. Risk Management Principles feedback
- 6. Review of Model Regulations: CME workshop feedback & DMP responses
- 7A. Asbestos Working Group Report
- 7B. Confined Spaces Working Group Report
- 7C. Guarding Working Group Report

16 July 2014

Mr Ian Fletcher
Independent Chair
Safety Legislation Reform Ministerial Advisory Panel

Dear Mr Fletcher 

WA APPROACH TO HARMONISATION OF HEALTH AND SAFETY LEGISLATION

Thank you for taking the time to meet with Nicole Roocke, Deputy Chief Executive on Wednesday, 9 July to discuss the Chamber of Minerals and Energy (CME) position on the Western Australian (WA) approach to safety legislation reform.

Further to this meeting, I would like to clarify a few points regarding our position.

CME has consistently supported the reform of safety legislation in Western Australia to move away from prescriptive regulation and incorporate best practice risk based approaches. While we have indicated CME does not support pursuing the harmonised legislation in its current form, at no point have we suggested discussion on safety reform is unnecessary and at no stage have we advocated for reforms to be ceased.

Rather CME considers it important for both industry and government in Western Australia to be clear of its priorities for reform in safety legislation by identifying those aspects which lead to best practice safety outcomes.

CME's position is not to passively await the outcomes of the review but rather proactively seek to influence the current Council of Australia Governments (COAG) review of the national model *Work Health and Safety Act 2011* (WHS Act) in the desired direction.

The work of Ministerial Advisory Panel is important to clearly articulate these priorities and the preferred approach for Western Australia in relation to the resources sector. CME supports this process and will continue to engage throughout to ensure our members views are expressed.

If you would like to discuss these issues further please contact Adrienne LaBombard, Manager – Workplace Health and Safety on (08) 9220 8520 or at a.labombard@cmewa.com.

Yours sincerely



Reg Howard-Smith
Chief Executive

cc: Richard Kern



Completed	
In progress/on track	
Delayed	
Off track	

STATUS REPORT		Updated: 14 July 2014
Update	SAFETY LEGISLATION REFORM	Low Pritchard
New information since last meeting	<ul style="list-style-type: none"> On 7 July 2014, DMP received Government approval to commence drafting the Resources Safety Bill, including transferring responsibility for Major Hazard Facilities from the Dangerous Goods Safety Act 2004. To determine the best approach for consolidating safety legislation, stakeholder consultation will be undertaken through a Regulatory Impact Statement (RIS) process. An external consultant will be engaged to facilitate this process, identifying the positives and negatives of the various options, and identifying a preferred option. DMP is continuing work on the mines safety provisions and liaising with Commerce on common provisions. Three working groups (Guarding, Confined Spaces and Asbestos), have concluded. Their reports will be considered at the 23 July 2014 Ministerial Advisory Panel meeting. 	
Milestones	Formal approval by Government to proceed	30 July 2014
	Drafting instructions completed for <i>Resources Safety Bill</i>	30 Oct 2014
	Cabinet approval of drafting instructions for the <i>Resources Safety Bill</i>	31 Dec 2014
Milestone status notes	<p><i>Another consultation RIS will be required once the preferred option for consolidating safety legislation is known.</i></p> <p><i>Drafting instructions for the Resources Safety Bill will need to be submitted to Cabinet for approval.</i></p>	

Update	RADARS	Low Pritchard
New information since last meeting	<ul style="list-style-type: none"> Critical Risks Branch recruitment process completed for: <ul style="list-style-type: none"> Director Dangerous Goods and Petroleum Safety Manager Critical Risks Manager Dangerous Goods Team Leader Critical Risks 2 x Principal Inspector Critical Risks OSH 5 x Principal Inspector Critical Risks onshore 1 x Senior Inspector Critical Risks offshore 5 x Senior Inspector Critical Risks onshore Dangerous Goods Safety Act statutory review by independent consultant George McCullagh is continuing and on track. (A copy of his presentation was provided to members after the 28 May 2014 MAP meeting) 	
Milestones	Ministerial Advisory Panel (MAP) on Safety Legislation Reform established.	Dec 2013
	Recruitment to new ARI contracts for Petroleum Safety Branch and Major Hazard Facilities commenced.	Jun 2014
	Statutory review by independent consultant of <i>Dangerous Goods Safety Act 2004</i> submitted to Minister.	Dec 2014
Milestone status notes	<p><i>Further recruitment will commence from late July 2014, for positions within Critical Risks not filled in previous recruitment and for Principal Dangerous Goods Officers and Senior Dangerous Goods Officers.</i></p>	

	2014												2015												2016											
	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
Government approval of proposed legislative approach																																				
Drafting Instructions Resources Safety Bill (mining only)																																				
Decision on placement of MHFs legislation																																				
Liaise with RGU with regard to the need for a RIS / PIA																																				
Approval by Government of drafting instructions (mining only)																																				
PCO draft Resources Safety Bill																																				
Introduce the Resources Safety Bill (mining only) to Parliament																																				
Resources Safety Bill passed through both Houses of Parliament																																				
Consultation with industry on legislative provisions in regs - Mines																																				
Prepare drafting Instructions for Resources Safety Regulations (mining only)																																				
Prepare Regulatory Impact Assessment for Resources Safety Regulations (mining)																																				
Resources Safety Regulations drafted by Parliamentary Counsel's Office																																				
Resources Safety Regulations Gazetted																																				

Assumptions:
Government approval of drafting instructions is obtained quickly
PCO can commit resources immediately to the drafting process
No significant delays in passing the Bills through Parliament
RIS on Resources Safety Regs doesn't raise any major issues

* Parliamentary recess 2014
Recess 1 week: 27 Feb - 11 March 2014
Recess 1 Week 20 March - 1 April 2014
Recess 3 Week 10 April - 6 May 2014
Recess 3 week 15 May - 10 June 2014
Recess 6 weeks 27 June - 12 August 2014
Recess 2 week 21 August - 9 September 2014
Recess 2 weeks 25 Sept - 14 October 2014
Recess 3 weeks 23 Oct - 18 Nov 2014
Last sitting date for 2014 - LA 27 Nov; LC 4 Dec 2014



Safety Legislation Reform: Consolidation options

Option 1	Option 2	Option 3	Option 4	Option 5 (STATUS QUO)
<p>NEW Resources Safety Act:</p> <p>Consolidating OSH provisions into one Act covering:</p> <ul style="list-style-type: none"> • Mining • Petroleum • Major Hazard Facilities <p>MHF operational safety provisions transferred from <i>Dangerous Goods Safety Act 2004</i>.</p> <p>MHF OSH provisions transferred from <i>Occupational Safety and Health Act 1984/WorkSafe</i></p>	<p>NEW Resources Safety Act:</p> <ul style="list-style-type: none"> • Mining (replaces <i>Mines Safety and Inspection Act 1994</i>); <p>NEW Petroleum and Major Hazard Facilities Safety Act:</p> <p>Consolidating safety provisions into one Act covering:</p> <ul style="list-style-type: none"> • Petroleum • Major Hazard Facilities <p>MHF operational safety provisions transferred from <i>Dangerous Goods Safety Act 2004</i>.</p> <p>MHF OSH provisions transferred from <i>Occupational Safety and Health Act 1984/WorkSafe</i></p>	<p>NEW Resources Safety Act:</p> <ul style="list-style-type: none"> • Mining (replaces <i>Mines Safety and Inspection Act 1994</i>); <p>NEW Petroleum Safety Act:</p> <p>Consolidating safety provisions from three separate petroleum Acts into one Act</p> <ul style="list-style-type: none"> • Petroleum <p>MHF operational safety remains under <i>Dangerous Goods Safety Act 2004</i></p> <p>MHF OSH remains under <i>Occupational Safety and Health Act 1984/WorkSafe</i>.</p>	<p>NEW Resources Safety Act:</p> <p>Consolidating OSH provisions into one Act covering:</p> <ul style="list-style-type: none"> • Mining • Petroleum <p>MHF operational safety remains under <i>Dangerous Goods Safety Act 2004</i></p> <p>MHF OSH remains under <i>Occupational Safety and Health Act 1984/WorkSafe</i>.</p>	<ul style="list-style-type: none"> • Resources Safety Act: Mining OSH (replacing <i>Mines Safety and Inspection Act 1994</i>) • Petroleum and Geothermal Energy Resources Act 1967 • Petroleum Pipelines Act 1969 • Petroleum (Submerged Lands) Act 1982 • Petroleum and Geothermal Energy Safety Levies Act 2011 • Dangerous Goods Safety Act 2004 (Major Hazard Facilities operational safety, under Resources Safety) • Occupational Safety and Health Act 1984 (Major Hazard Facilities OSH, under WorkSafe)

Western Australia

Work Health and Safety (Resources) Bill 2013

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Work Health and Safety (Resources) Bill - numbering based on Model WHS Act

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Western Australia

Resources Safety Bill 2014

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Risk Management Principles: Summary of feedback from industry

Industry supports modernising mines safety legislation using a risk-based approach and is generally supportive of the draft Risk Management Principles.

They note that the onus is on the operator to manage their risks whilst enabling flexibility in their chosen management approach dependent on the unique nature of their site/and or project. This allows for adaptation to new technology and innovative management approaches moving forward. Industry supports inclusion of hierarchy of control provisions and notes this concept has previously received Ministerial endorsement at the State level.

General comments

- It is critical the way these provisions are articulated in legislation provides adequate flexibility and does not create unnecessary administrative burdens.
- Consolidation of risk management provisions across the Act and Regulations would reduce the amount of duplicated legislation and reduce confusion, provided that sufficient support is provided in Codes of Practice and Guidance Notes.
- Precautions need to be taken to mitigate any risks that may arise from a decrease in prescription, particularly in relation to the role of the Inspectorate and its ability to determine the effectiveness of the controls.
- The language used in the current draft of the Risk Management Principles document is inconsistent and leads to some confusion. Industry recommends this is reviewed and clarified, to ensure consistent terminology and provide further context, examples and definitions.

Safety Management System (SMS)

- These provisions need to be easy to interpret and set clear risk-based, outcomes-focused standards for compliance. Industry supported flexibility in how an SMS is developed, but requested clarification on how this would work in practice, and how the regulator will monitor compliance with a comprehensive and integrated system.
- Industry requested further clarification of the proposed requirement to include Principal Hazard Management Plans (PHMP) as well as Principal Control Plans (PCP). There is potential overlap, complexity and administrative burdens, without necessarily improving safety outcomes.
- Although operators would be responsible for determining which plans and controls need to be articulated in the SMS, a decision not to include a PHMP specified in the legislation would likely need to be justified and may create interpretational and compliance issues.
- Industry considers further work should be undertaken to ensure the specified hazards and principal controls included in the regulations are as relevant as possible to mining in WA. The specific hazards and controls listed in the schematic (on page 6) have been incorporated from the National Mines Safety Framework Chapter 10 and:
 - may not be relevant to WA;
 - will not be relevant to all sites;
 - are too general in some cases (Exploration); and
 - are likely to change over time (ie as new incident data becomes available or new technologies implemented).
- It was suggested that a workshop be held to provide advice on the SMS provisions, to reduce prescription and complexity and ensure SMS can be effectively implemented.
- The requirement to include the organisational chart and policies/processes for filling vacancies within the SMS should be further considered by MAP's proposed Management and Supervision Workshop.

CME industry workshop feedback on Model Work Health and Safety Mines Regulations – Chapter 9

Note: DMP responses added in italics.

On 28 April 2014, CME hosted a Workshop with member companies to discuss providing input to the Ministerial Advisory Panel (MAP) regarding the proposal to incorporate elements of the Model Work Health and Safety (WHS) Mines Regulations – Chapter 9 in Western Australia. Workshop members were asked to identify areas of concern or uncertainty and the key issues for MAP to consider in the development of proposed reforms to mines safety regulation in Western Australia.

Workshop members agreed the following issues require further consideration and recommend MAP Working Groups be established to consider:

- **Terminology and definitions** – Members noted the lack of consistency of definitions between the Core and draft Non-Core WHS (Mining) Regulations as well as across sections of the regulations. Members agreed it is important to ensure these are clear and consistent and also noted benefits of aligning with harmonised definitions where appropriate.

DMP: The terminology and definitions are inconsistent, but will be amended when the new regulations are prepared. Harmonised definitions should be adopted where possible.

- **Statutory Roles** – Similar to issue above, members noted the need for clarity and consistency with regards to the roles and responsibilities of the statutory positions identified in the regulation. This issue could be considered by the Working Group looking into Management and Supervision as recommended by MIAC on 10 April.

DMP: All statutory positions will be considered by the Tri-State Competency Advisory Committee (TCAC) and then finalised. The constitution for TCAC has not yet been finalised. However, TCAC should consider this, as it provides consistency in the tri-states.

- **Work Health and Safety Management Plans and Principal Hazard Management Plans** – Members agreed further consideration is required to ensure regulations are administratively simple and flexible enough to enable PCBUs to develop site specific plans. Members noted the level of detail required in the regulations versus a Code of Practice or Guideline requires further consideration. Members also agreed the MAP Working Group should consider the PCBU regulator interface, review process, and how management plans will be used by the inspectorate.

DMP: We agree that regulations should be general in nature so the PCBU can prepare site specific plans. The details will be provided in a Code of Practice.

The Department will prepare the regulations and consult with MAP.

- **Contractor Safety** – Members noted the lack of clarity in Core and Non-Core Regulations regarding the roles and responsibilities of the principal employer with regards to contractors and the definition of ‘a person conducting a business or undertaking (PCBU)’ in that regard. Members agreed further consideration of where responsibility and accountability sit for development and review of PHMP and WHS Management Systems relevant to work undertaken by contractors is required. Members

agreed on importance of regulations to establish clear requirements for how these plans and associated risks will be managed.

DMP: The 'operator' develops the SMS and liaises with the contractors. The contractors SMS has to be incorporated in the 'operators' SMS.

In addition to the issues above, Workshop members would also like to raise the following issues with MAP:

- **MIAC and Consultation**— Members queried the ongoing role of MIAC and consider the body should be maintained and formalised in any revised regulations. Members noted the difficulty of providing comments on details of draft regulations in the absence of clarity on the proposed WHS (Resources) Act and WHS (General) Act and request drafting instructions be provided as soon as possible for consideration and an appropriate period of consultation with industry (outside of the MAP process) be undertaken.

DMP: MIAC is, and will continue to be, in the legislation as a statutory body. The drafting instructions for the regulations have not yet been finalised. As sections of the regulations are finalised, a briefing will be provided to MAP.

- **Fitness for Work** – Members recommend the word 'drugs' be amended to include 'other substances' to ensure provision captures substances not included in the definition of 'drugs' i.e. synthetics.

DMP: When these regulations are drafted, this proposal will be considered. MAP members will be consulted on this issue.

- **Health Monitoring** – Membered noted the need for clarity on who has responsibility for undertaking health monitoring (i.e. when the principal employer versus a contractor is responsible) and who must cover these costs. Members noted holding a principal employer responsible for costs associated with health monitoring for 'workers' including contractors would pose a significant additional cost on industry.

DMP: This issue will be considered when the regulations are drafted. MAP members will be consulted.

With regard to the cost, this is a matter between the operator of the mine and the contractors.

- **Consultation and Safety Role for Works** –Regarding consultation, members agreed the decision when to consult should be at the discretion of the principal employer. Members noted importance of understanding the consultation requirement under the Act in considering how this should be addressed in the regulations.

DMP: The proposed legislation will not differ from the present system where consultation occurs through Safety and Health Representatives and Safety and Health Committees. Similar procedures will be followed for the development of Safety Management Systems, Principal Hazard Management Plans and Principal Control Plans.



Asbestos Working Group Report

This report documents the observations and recommendations of the Asbestos Working Group.

Background

The Western Australian Government has committed to overhauling the way safety and health in the resources industry is regulated.

In January 2014, the Minister for Mines and Petroleum established the Ministerial Advisory Panel on Safety Legislation Reform (MAP), comprised of industry, union and government representatives, to provide advice on the development of safety reforms.

In June 2014, MAP established the Asbestos Working Group, to examine the regulation of safety and health relating to asbestos. Minutes and supporting papers from Working Group meetings are published on the DMP website.

Role

The role of the working group was included in the Terms of Reference:

- Review the section of the nationally harmonised work health and safety regulations for asbestos;
- Identify areas of prescription that could be added and/or removed and put into codes or guidance material;
- Review legislation from other jurisdictions, and the Australian Standard on asbestos; and
- Propose provisions, and level of prescription that should be included in the regulations.

Membership

Name:	Job Title:	Representing:
Greg Stagbouer	Principal Consultant Meridio	Australian Drilling Industry Association
David Todd	General Manager of HSEQ Macmahon Group	Chamber of Minerals and Energy of WA
Gary Wood	Secretary CFMEU Mining & Energy Division – WA District	Unions WA
Jennifer Low	Policy Advisor Chamber of Commerce and Industry WA	Chamber of Commerce and Industry WA
Mike Rowe	Inspector of Mines – Health Department of Mines and Petroleum	Department of Mines and Petroleum

Summary of Issues

There are two key issues for the mining resources industry relating to asbestos: the removal of asbestos; and naturally-occurring asbestos.

Removal of asbestos, and asbestos cement products used in construction and pipes at resources industry sites, is less frequently encountered compared to the past.

Naturally-occurring asbestos (and other fibrous minerals) was considered to be of much greater significance, as fibres may be disturbed as a result of mining for other minerals, such as iron ore and nickel, presenting a risk of asbestos-related disease.

Australian regulators treat all fibrous minerals as harmful. This is supported by the national exposure standard for all forms of asbestiform minerals being set at 0.1 fibres per millilitre (f/mL) .

Due to current low exposure levels and a long latency period, health monitoring of employees to determine the effects of asbestos exposure is problematic.

The Working Group agreed that there was an excessive level of detail and prescription in the national Model WHS Regulations, and recommend that this should be reduced.

The Working Group examined the differences between WA and national Acts, Regulations, Codes Of Practice and Guidelines, and found that the proposed new legislation is more comprehensive than the existing Mines Safety and Inspection Regulations and would adequately address all issues associated with management of naturally occurring asbestos on mine sites.

Key Observations and Findings

Current Regulatory Framework

Currently, safety and health related to asbestos in the mining industry is regulated by Resources Safety Division under the *Mines Safety and Inspection Act 1984*.

The national Work Health and Safety Act (WHS Act) has 94 pages on asbestos - mainly related to licensing and removal, and industry feedback indicates that this is overly detailed and prescriptive.

There are two national Codes of Practice: *How to Safely Remove Asbestos* and *How to Manage and Control Asbestos in the Workplace*.

Resources Safety has a Guideline: *Management of Fibrous Minerals in Western Australian Mining Operations*.

The current Mines Safety and Inspection Regulations still refer to outdated National Occupational Health and Safety Commission (NOHSC) material. The regulations have not yet been updated, as it was expected that agreed elements of the national reforms to health and safety legislation would have been implemented by now.

Removal of asbestos (e.g. construction materials, pipes)

For the removal of asbestos and asbestos cement products used in the construction of old buildings or asbestos water pipelines, legislation requires the Principal Employer to notify Resources Safety at DMP. The Principal Employer must then follow the national Code of Practice How to Safely Remove Asbestos, which includes use of licensed asbestos removalists to remove the asbestos.

In the national WHS Regulations, there are over 111 multi-part regulations relating to asbestos, but most of these regulations cover the licensing and training of asbestos removalists. The group considered this to be overly-detailed, prescriptive and of limited relevance to the resources industry, which is mainly affected by naturally-occurring asbestos and other fibrous minerals.

Naturally-occurring asbestos (and other fibrous minerals)

For naturally-occurring asbestos and other fibrous minerals, DMP developed a guideline *Management of fibrous minerals in Western Australian mining operations*, which was designed to complement and align with the national Code of Practice.

Naturally-occurring asbestos areas are well-mapped and all current iron ore and nickel operators are aware of the asbestos issue and have Asbestos Management Plans.

Currently, the Mining Act requires operators to submit a Mining Proposal to DMP, which asks the proponent if they are likely to encounter asbestos in the area being explored/mined.

If the proponent identifies that asbestos is likely to be encountered, they are referred to Resources Safety. Mines inspectors brief them on the requirement to lodge an Asbestos Management Plan for review. If a proponent fails to identify the risk of asbestos, commences exploration and encounters asbestiform minerals, they are required to report it to Resources Safety. The proponent will be required to lodge an Asbestos Management Plan for review.

If an operator wishes to progress from exploration to mining, Resources Safety inspectors cover the requirement for an Asbestos Management Plan in discussions with the operator prior to the commencement of mining.

If the proponent lodges an inadequate Asbestos Management Plan, it is rejected and mining cannot commence until the plan is accepted.

If the proponent commences mining without having an accepted and implemented plan, they may be prosecuted.

A site Asbestos Management Plan is a living document that is updated as the mining operation develops. Resources Safety can verify the Asbestos Management Plan through inspections, audits, reviews, reporting mechanisms, and consultation with Safety and Health Representatives at the mine site.

The Mine Safety and Inspection Regulations 1995 require the mining industry to regularly conduct personal monitoring of employees who may be exposed to atmospheric contaminants, including asbestiform minerals. The results are reported to Resources Safety and recorded on the CONTAM system. The Inspectorate can follow up results above the exposure standard with the company.

With regard to health monitoring for detecting asbestos-related diseases:

- The National Asbestos Exposure Register does not really apply to mining, but DMP recommends companies keep a record of their employees;
- Until January 2013, DMP required health assessments for all WA mine workers. This ceased when studies of the MineHealth database showed that these assessments neither prevented nor detected ill health at an early stage.
- The State mining engineer may still direct that additional health assessments be carried out on employees where required.

The current framework of risk-management plans and Safety Management Systems is sufficient to manage asbestos issues on mine sites. DMP has employed additional inspectors to verify implementation of risk-based documentation submitted by industry.

Proposed Regulatory Framework

The Department of Mines and Petroleum is modernising the mining legislation to move to a more risk-based approach to safety. Legislation will be less prescriptive, with codes of practice containing more detail. Guidelines for industry may be produced, including templates to assist smaller operators in managing their risks. There will be no reference to Australian Standards in the legislation.

Under proposed regulations, operators will be required to submit to Resources Safety a Work Health and Safety Management System (WHSMS), consisting of Principal Hazard Management Plans (PHMPs), Principal Control Plans (PCPs) and an Asbestos Management Plan (where naturally occurring asbestos is present or expected to be encountered). Consultation with workers is required in the preparation of the WHSMS, and the level of detail will vary depending upon the scale and complexity of the mining operation.

Work at a mine cannot proceed without an accepted WHSMS in place, and this will be reviewed and revised as required.

One of the PHMP's is Air quality, airborne dust and other airborne contaminants, which includes naturally occurring asbestos. Part 10.2 of the regulations Managing Risks includes Control of risk, air monitoring, consultation with workers, information, training and instruction, health assessment and health monitoring.

Trigger Action Response Plans (TARPs) are an integral part of PHMPs, defining the actions required by mine site personnel in response to a deviation from normal mine conditions. A TARP could specify that if monitoring reveals that asbestos fibres, a response plan must be put into effect.

One of the PCP's is a Health Control Plan, which includes consultation, identification of roles and risk identification, assessment, control and evaluation (risk management). One of the specific areas mentioned in the Health Control Plan is asbestos dust causing asbestosis, lung cancer and mesothelioma.

Recommendations:

That the Ministerial Advisory Panel:

- 1. Note that the current regulatory framework relating to asbestos should adequately address all issues associated with management of naturally occurring asbestos on mine sites until new legislation is in place. Codes of Practice and guidelines can be updated in the meantime, if required.**
- 2. Note that the proposed new regulatory framework regulations will be more comprehensive, requiring operators to submit to Resources Safety a Work Health and Safety Management System (WHSMS). This consists of Principal Hazard Management Plans (PHMPs), Principal Control Plans (PCPs) and an Asbestos Management Plan (where naturally-occurring asbestos is present or expected to be encountered), which must be prepared in consultation with workers. Mining cannot commence without an accepted WHSMS in place.**
- 3. Reduce the level of detail and prescription in the national Model WHS Regulations regarding asbestos management and removal.**



Confined Spaces Working Group Report

This report documents the observations and recommendations of the Confined Spaces Working Group.

Background

The Western Australian Government has committed to overhauling the way safety and health in the resources industry is regulated.

In January 2014, the Minister for Mines and Petroleum established the Ministerial Advisory Panel on Safety Legislation Reform (MAP), comprised of industry, union and government representatives, to provide advice on the development of safety reforms.

In June 2014, MAP established the Confined Spaces Working Group, to examine the regulation of safety and health relating to confined spaces. Minutes and supporting papers from Working Group meetings are published on the DMP website.

Role

The role of the working group was included in the Terms of Reference:

- Review the section of the nationally harmonised work health and safety regulations for confined spaces;
- Identify areas of prescription that could be added and/or removed and put into codes or guidance material;
- Review legislation from other jurisdictions, and the Australian Standard on confined spaces; and
- Propose provisions, and level of prescription that should be included in the regulations.

Membership

Name:	Job Title:	Representing:
Kevin Wolfe	Business Development Manager Monadelphous KT	Australian Pipeline Industry Association
Mick O'Neill	HSE Lead Monadelphous KT	Australian Pipeline Industry Association
Danny Spadaccini	Director of Safety Alcoa of Australia Ltd	Chamber of Minerals and Energy of WA
Lisa Moore	Senior Health & Safety Advisor - KHG Operations WA Wesfarmers Chemicals, Energy & Fertilisers	Plastics and Chemical Industries Association
Glenn McLaren	State Organiser Australian Manufacturing Workers Union	Unions WA
Jennifer Low	Policy Advisor Chamber of Commerce and Industry WA	Chamber of Commerce and Industry WA
Graham James	Regional Inspector of Mines (West) Department of Mines and Petroleum	Department of Mines and Petroleum

Summary of Issues

The Working Group examined the differences between WA and national Acts, Regulations, Codes of Practice and Guidelines, and identified specific issues regarding:

- the reclassification of confined spaces as non-confined spaces, due to ambiguity in the Australian Standard and Code of Practice, as well as the risk of operator complacency regarding non-confined spaces;
- ensuring the safety of emergency response/emergency service workers before entering a confined space;
- the application of regulatory requirements, due to variations in skills, experience, training, equipment, and procedures, particularly for small to medium operators;
- trenches and when they are classified as a confined space;
- workers moving between sites and the need for appropriate training on the differences in confined space hazards and different expectations for working in confined spaces;
- promoting the safety benefits of technology for work in confined spaces in the Code of Practice;
- including more examples and definitions in the Code of Practice.

Key Observations and Findings

Current Regulatory Framework

Worldwide, the regulatory frameworks for confined spaces range from very loose regulation, to the approach used by Australia, the UK and USA, subject to differences. In the UK, it is possible to declassify and reclassify a confined space repeatedly during a period of work. In the USA, there are confined and non-confined spaces, but exemptions may be granted.

Within Australia, the regulatory framework is structured differently in each jurisdiction. For example, Queensland uses national model legislation with multiple regulations and the national Code of Practice.

In WA, safety and health related to confined spaces is regulated under the WA Occupational Safety and Health Act 1984 (by WorkSafe) and the Mines Safety and Inspection Act 1984 (by Resources Safety). The Mines Safety and Inspection Regulations has a regulation (4.2) referring to the requirements of Australian Standard AS2865: Confined Spaces.

Proposed Regulatory Framework

The Department of Mines and Petroleum is modernising the mining legislation to move to a more risk-based approach to safety. Legislation will be less prescriptive, with Codes of Practice containing more detail. Guidelines for industry may be produced, including templates to assist smaller operators in managing their risks. There will be no reference to Australian Standards in the legislation.

Reclassification of confined space as non-confined space

Reclassification requirements need to consider a wide variety of confined spaces, ranging from large tanks with easy access, to small tanks where only one person can work, to a series of tanks, which may not provide direct line of sight for monitoring, or may require the use of a breathing apparatus. For some spaces, it may be impossible to reclassify as a non-confined space, because there are inherent hazards that cannot be eliminated.

Australian Standard AS2865

Standards may be rewritten every few years. AS2865 on confined spaces has changed significantly in its intent and wording since the Mines Safety and Inspection Act was developed.

AS2865 section 1.5.5 Risk Control Measures, clause 2.4.6 covers reclassification of confined spaces:

“For a confined space to be reclassified as a non-confined space, it needs to have undergone sufficient changes in structure or usage to eliminate (without the need for risk control measures) all possible sources of inherent hazards that define a confined space. Any changes to a confined space would have to be such that a subsequent risk assessment would determine that it no longer meets the criteria for a confined space.”

The words “sufficient”; “changes in structure”; and “risk control measures” are all open to interpretation. Another issue is that there may be other hazards not covered by “the criteria for a confined space”. This creates difficulties for industry and the regulator in assessing compliance.

Code of Practice

The national Code of Practice on confined spaces by Safe Work Australia is unclear on reclassification of confined spaces. It uses different terminology (“declassifying” instead of “reclassifying”) and states that the space needs to have undergone “sufficient changes in structure and use to eliminate all inherent hazards”, without clearly defining what this means.

The risk is that an operator may not interpret the confined space requirements in a safe manner. For example, to reclassify a tank as a non-confined space, some operators may consider that closing a valve to a tank is sufficient to eliminate the inherent hazards, and then reclassify the tank as a non-confined space. Alcoa takes a safer approach - remove a spool, a valve and add a pressure blank to eliminate the hazard, and design this capability into their plant/equipment.

Once a confined space is reclassified as a non-confined space, operators may become complacent. They may then cease regular monitoring of gas levels, reconnect power sources, and not consider emergency response when work is being undertaken in the (non-confined) space.

Potential solutions

A confined space reclassification risk-assessment tool may be useful.

The group agreed that the clarifications provided in Mines Safety Bulletin 111 would help address the shortcomings of AS2865 and the national Code of Practice. The group recommended that the below extracts from the Bulletin should be included in the national Code of Practice:

For a confined space to be reclassified as a non-confined space:

- *Eliminate all inherent hazards, including asphyxiation, fire or explosion, and engulfment.*
Note: The control or temporary elimination of inherent hazards alone is not sufficient to reclassify a confined space.
- *Remove all hazardous services. For example, physically isolate devices with stored energy or reduce them to a zero-energy condition and disconnect from their power sources.*
- *Identify and eliminate or mitigate all other reasonably foreseeable hazards associated with the confined space and the tasks being conducted. For example, complete a risk assessment for all tasks or activities to be conducted inside or around the confined space, and implement a safe system of work.*
- *Significantly change the physical characteristics of the space. For example:*
 - *eliminate the enclosed or partially enclosed nature of the vessel, such that a safe atmospheric condition is maintained without the need for any risk control measures (e.g. forced ventilation).*
 - *modify any restricted entry and exit to improve access and reduce emergency response time.*

Note: Vessels such as classified plant and pressure vessels are unlikely to be reclassified because they cannot be structurally modified. These vessels will remain confined spaces.

Other safety issues regarding work in confined spaces

Clarification is needed to ensure the safety of emergency response workers before entering a confined space. Alcoa's process is that emergency response workers must assume that every possible safety issue within the confined space has occurred and is present. They must wear breathing apparatus and PPE. Additionally, 'Emergency service worker' (e.g. a firefighter or ambulance driver) and 'Emergency response worker' (as employed by the mine site) should be included in definitions. The intention of the regulations is to provide emergency service workers with an exemption from needing a certificate for working in confined spaces. Emergency response teams employed by a company may interpret that the exemption applies to them.

Trenches and when they are classified as a confined space is another issue requiring clarification and a definition.

Confined space hazards differ from site to site, and it is important that workers moving between sites are appropriately trained on the differences, and different expectations for working in confined spaces. Minimum training standards are included in AS2865, but need to be clarified in the Code of Practice.

Use of technology in confined spaces is something which should be considered by industry. It can assist in providing visibility for monitoring/inspections (e.g. using a GoPro camera to inspect confined spaces or monitor a worker in a confined space), and for improving communication and worker training, and hence reduce the likelihood of injury to workers. Examples of the application of technology should be provided in the Code of Practice.

Skills, experience, training, equipment, and procedures vary across the industry. Of particular concern are small to medium operators. For example, at some smaller companies, the emergency procedure consists of phoning 000. Also, some treat a vessel as a restricted area, rather than a confined space.

The recommendations from this group need to be captured at a national level in the Codes of Practice produced in conjunction with Safe Work Australia, to ensure a consistent message to industry.

Recommendations:

That the Ministerial Advisory Panel support:

- 1. Changes to clarify the reclassification requirements in the national Code of Practice for work in confined spaces, based on Mines Safety Bulletin 111, to ensure a consistent message to industry;**
- 2. Development of a confined space reclassification risk-assessment tool, referencing the Code of Practice and Regulations;**
- 3. Changes to the national Code of Practice (or guidelines), to:**
 - **clarify the safety requirements for emergency response/emergency service workers entering a confined space;**
 - **include definitions for emergency service worker; emergency response worker; and trench;**
 - **clarify when a trench is considered to be a confined space;**
 - **clarify minimum training requirements for safe working in confined spaces;**
 - **include various examples throughout the Code of Practice;**
 - **include examples of the application of technology with regards to work in confined spaces.**



Guarding Working Group Report

This report documents the observations and recommendations of the Guarding Working Group.

Background

The Western Australian Government has committed to overhauling the way safety and health in the resources industry is regulated.

In January 2014, the Minister for Mines and Petroleum established the Ministerial Advisory Panel (MAP) on Safety Legislation Reform, comprised of industry, union and government representatives, to provide advice on the development of safety reforms.

In June 2014, MAP established the Guarding Working Group, to examine the regulation of safety and health relating to guarding. Minutes and supporting papers from Working Group meetings are published on the DMP website.

Role

The role of the working group was included in the Terms of Reference:

- Review the section of the nationally harmonised work health and safety regulations for guarding;
- Identify areas of prescription that could be added and/or removed and put into codes or guidance material;
- Review legislation from other jurisdictions, and the Australian Standard on guarding; and
- Propose provisions, and level of prescription that should be included in the regulations.

Membership

Name:	Job Title:	Representing:
Richard Kern (facilitator)	Regional Manager – Asia Pacific, Health, Safety, Loss Protection and Security Newmont Asia Pacific	Chamber of Minerals and Energy of WA
Rick Armstrong	Principal Drilling Coordinator Rio Tinto	Australian Drilling Industry Association
Belinda Stuckenberg	Manager Safety Improvement, Iron Ore BHP Billiton	Chamber of Minerals and Energy of WA
Ben Morgan	Senior Health & Safety Advisor – CSBP Ammonia/ Ammonium Nitrate Wesfarmers Chemicals	Plastics and Chemical Industries Association
Chris Verran	Senior HSETQ Coordinator Wallis Drilling Pty Ltd	Australian Drilling Industry Association
Stephen Price	Branch Secretary WA The Australian Workers' Union	Unions WA
Jennifer Low	Policy Advisor (OSH and Workers Compensation) Chamber of Commerce and Industry WA	Chamber of Commerce and Industry WA
Eric Manning	HSE Coordinator Monadelphous KT Pty Ltd	Australian Pipeline Industry Association
Gary Wood	Secretary CFMEU Mining & Energy Division – WA District	Unions WA
Neil Woodward	Regional Inspector of Mines (North) Department of Mines and Petroleum	Department of Mines and Petroleum

Summary of Issues

The Working Group examined the differences between WA and national Acts, Regulations, Codes of Practice and Guidelines, and identified the following issues:

- WA and national legislation requires the use of a tool to remove fixed guarding on plant/machinery:
 - Industry believes that this may be too prescriptive, costly to implement, impracticable and unnecessary. Industry considers that the requirement to use a tool to remove guarding should be moved to the Code of Practice;
 - DMP and Union representatives believe that use of a tool to remove guarding is a reasonable and practical requirement, which is included in legislation in other jurisdictions (including WorkSafe) and the Australian Standard. They also consider that removing this requirement from regulations would increase risk.
 - The group did not reach agreement on this matter, so it was referred to MAP for a decision.
- Industry considered that the guarding regulations are too prescriptive as they permit the use of sensors and other technology only if the other types of guarding are impracticable. DMP believe that the hierarchy of control should be utilised.
- Equipment purchased by industry should have safeguards designed in, not retrofitted, and should comply with legislation and Codes of Practice. This also applies to imported equipment, and importers have a legal duty to comply;
- In developing the new legislation and transition period, consideration should be given to the impacts of retrofitting compliant guards to existing plant and equipment, some of which may have been built in the 1960s and 1970s;
- The WA Code of Practice contains too many non-mining examples, limiting its relevance to the resources industry and increasing the risk of non-compliance. More heavy plant examples should be included;
- Inconsistency in the language used in the current Code of Practice with a mix of recommendations and mandatory directions;
- The mining industry will require time to educate staff on the new risk management approach, to facilitate a smooth transition;
- The importance of consultation with frontline workers when undertaking risk assessments. There is concern that risk assessments are being developed by higher-level personnel in an office, or a consultant, without consulting the workers who are using the equipment;
- The need for alignment and clarity across the suite of regulatory documents - risk-management principles from the Act to the regulations, through to the Code of Practice, to ensure they are consistently applied.

Key Observations and Findings

Current Regulatory Framework

Legislation

Currently in WA, safety and health relating to guarding is regulated under the *WA Occupational Safety and Health Act 1984* (administered by WorkSafe) and the *Mines Safety and Inspection Act 1994* (administered by Resources Safety).

Under the Mines Safety and Inspection Regulations, Division 2 *General duties relating to items of plant* and Division 3 *Classified plant* include the requirements for guarding.

The working group noted an inconsistent approach in some parts of the current Mines Safety and Inspection legislation, with some regulations requiring a risk-based approach, whereas others are highly prescriptive.

Regulation 6.2(2)(f) in the Mines Safety and Inspection Regulations is similar to the guarding provisions in the Model WHS regulations (regulations 189, 194, and 208):

(2) As a minimum, consideration should be given to the following methods of risk reduction —

(f) ensuring that any guarding provided for plant and its operation comprises —

(i) a permanently fixed physical barrier — where no person requires complete or partial access to the dangerous area during normal operation, maintenance or cleaning;

(ii) an interlocked physical barrier — where a person may require complete or partial access to the dangerous area during normal operation, maintenance or cleaning; or

(iii) a physical barrier securely fixed in position by means of fasteners or other suitable devices, sufficient to ensure that the guard cannot be altered or removed without the aid of a tool or key (but only where a guard in accordance with subparagraphs (i) or (ii) is not practicable),

but, if none of the guards described in subparagraphs (i), (ii), or (iii) are practicable, by providing a presence sensing safeguard system;

Industry considered that the last part of this regulation is too prescriptive - it permits use of sensors only if the other types of guarding are impracticable. It should include provision for development of a risk management plan that allows the use of sensors or other technology to manage the hazard, rather than prescribing fixed operational guarding (e.g. for drill rigs, lathes).

Industry's view is that regulation 6.2(f)(iii) requiring use of "a tool or key" to remove guarding is too prescriptive, and believe that there are other methods available to ensure adequate control measures. Industry suggested that the requirement for a tool should be moved to the Code of Practice, as an example of leading practice.

Union and DMP representatives are concerned that removing the tool requirement from the regulations increases risk and would differ to the approach used by many other regulators across Australia (including WorkSafe WA). The group could not reach agreement on this issue.

The Code also refers to Australian Standard AS4024 part 1601, clause 6.4.4, which states that the tool must be "not normally available to an operator". This needs to be defined, as it is open to interpretation. It may also not be practicable and it is possible that workers may disregard this requirement.

Codes of Practice

WA

The WA [Code of Practice on Safeguarding of machinery and plant](#) was published in 2009 by the Commission for Occupational Safety and Health and Mining Industry Advisory Committee. It was jointly developed, to enable a consistent approach across WA industries.

The group considered that many examples used in the code are not relevant to mining (e.g. guarding for food processing equipment). The Code should include more examples related to guarding for heavy plant (mining, petroleum, civil, drilling).

The group discussed whether mining-specific and petroleum-specific Codes should be developed. The current Code was jointly-developed with WorkSafe and enables a consistent approach for workers moving between general industry and the resources industry. Resources Safety would prefer to

maintain alignment with WorkSafe and continue with a joint Code, rather than developing specific Codes for mining and petroleum.

Language in the Code of Practice is inconsistent - it should include recommendations and examples of good practice, not prescriptive directions. The Code mentions things you “must” do. An operator could devise a control measure which may differ to the prescriptive requirements in the Code of Practice, but be more practicable and effective in mitigating the risk.

National

There is no dedicated national code of practice on guarding of machinery. However, the national Code of Practice [Managing Risks Of Plant In The Workplace](#) (Safe Work Australia, September 2013), refers to guarding throughout the risk assessment process, and section 4.1 *Guarding Plant* includes specific control measures.

Australian Standards

Australian Standard AS4024.1601 – 2006 part 6.4.4 Removal Only By Tool specifies: *“removable with the use of a tool not normally available to an operator”*. Industry considers that this is not always practical, because tools vary per site and role. It would be costly for operators to have to change components to meet this requirement. Members believed that the intention of the provision is to make people stop and think about what they’re doing before they remove the guard.

Proposed Regulatory Framework

The Department of Mines and Petroleum is modernising the mining legislation to move to a more risk-based approach to safety. Legislation will be less prescriptive, with codes of practice containing more detail. Guidelines for industry may be produced, including templates to assist smaller operators in managing their risks. There will be no reference to Australian Standards in the legislation.

The risk-based principles in the proposed legislation require a Safety Management System, including Principal Hazard Management Plans and Principal Control Plans, one of which is the Mechanical Engineering Control Plan. There is a need for alignment and clarity between these risk management principles, the Code of Practice and the templates used by industry, to ensure they are consistently applied. Any ambiguity across this suite of documents would create compliance issues for industry and enforcement issues for the regulator.

Recommendations:

That the Ministerial Advisory Panel:

1. Note that subject to the other recommendations listed below, the guarding requirements in the proposed legislation should adequately address the management of risks associated with work near, or around, items of plant and machinery;
2. Ensure that there is alignment and clarity between the Code of Practice and the risk management principles in the proposed regulations, to remove ambiguity and ensure they are applied consistently (e.g. Mechanical Engineering Control Plan);
3. Note that for Regulation 6.2(2)(f) in the Mines Safety and Inspection Regulations:
 - Industry would like the proposed regulations to provide for development of a risk management plan that allows the use of sensors or other technology, rather than prescribing fixed operational guarding (e.g. for drill rigs, lathes, etc).
 - Industry considers the requirement for use of a tool under Regulation 6.2(2)(f)(iii) is too prescriptive and should be in the Code of Practice.
 - Union and DMP representatives are concerned that the removal of these requirements from the regulations may result in unnecessary risk and would differ to the approach used by other regulators in Australia, including WorkSafe WA.
4. Ensure that in developing the new legislation and transition period, consideration should be given to the impacts of retrofitting compliant guards to existing plant and equipment, as well as linking to any plans in the relevant Principal Control Plans.
5. Ensure that language in the Code of Practice is consistent and in the form of a recommendation, rather than being mandatory, but must be aligned with the regulations.
6. Amend the Code of Practice to include more heavy plant examples (e.g. mining, petroleum, drilling, civil engineering, construction).



MEETING MINUTES:

Ministerial Advisory Panel on Safety Legislation Reform

Date:	Wednesday, 23 July 2014	Time:	8:30am to 10:30am
Venue:	Fraser Suites, Fraser Room 3 – Level 1 – 10 Adelaide Terrace, East Perth		

Present

Mr Ian Fletcher	Independent Chairperson
Mr Ivor Roberts	A/Executive Director, Resources Safety Division, Department of Mines and Petroleum (DMP) (<i>proxy for Simon Ridge</i>)
Mr Andrew Chaplyn	State Mining Engineer and Director Mines Safety, Resources Safety Division, Department of Mines and Petroleum (DMP)
Ms Peta Libby	Managing Director, Digirock Exploration Geologists (representing Association of Mining and Exploration Companies - AMEC) (<i>proxy for Simon Bennison</i>)
Mr Glenn McLaren	State Organiser, OHS Advisor, Australian Manufacturing Workers' Union (AMWU)
Mr Kevin Wolfe	Business Development Manager, Monadelphous representing Australian Pipeline Industry Association (APIA)
Ms Miranda Taylor	Director – Environment, Safety & Productivity, Australian Petroleum Production and Exploration Association (APPEA)
Mr Gary Wood	Secretary, Construction Forestry Mining and Energy Union (CFMEU) Mining and Energy Division WA District
Mr Richard Kern	Regional Manager Asia Pacific Newmont (representing Chamber of Minerals and Energy WA - CMEWA)
Mr Michael Tooma	Partner, Norton Rose Fulbright (<i>via teleconference</i>)
Mr Nick Zovko	Regulatory Policy Manager, Plastics and Chemicals Industries Association (PACIA)
Mr Lew Pritchard	General Manager Business Development, Department of Mines and Petroleum (DMP)
Mr David Eyre	Project Manager, Department of Mines and Petroleum (DMP)

Apologies

Mr Simon Ridge	Executive Director, Resources Safety Division, Department of Mines and Petroleum (DMP)
Mr Greg Stagbouer	Director, Australian Drilling Industry Association (ADIA)
Mr Simon Bennison	Chief Executive Officer, Association of Mining and Exploration Companies (AMEC)
Mr Stephen Price	Secretary, Australian Workers Union (AWU)
Ms Karin Lee	Manager Safety and Risk Services, Chamber of Commerce and Industry WA (CCI WA)
Mr Chris Oughton	Director, Kwinana Industries Council (KIC)
Ms Jennifer Shelton	Principal Policy Officer, Department of Mines and Petroleum (DMP)

Agenda items

Item	Topic	Action
1.	Introduction & Actions from previous meeting	
	<ul style="list-style-type: none"> Andrew Chaplyn has accepted the role of State Mining Engineer and will attend MAP meetings. 28 May 2014 meeting minutes were approved and uploaded to DMP website. Actions from previous meetings: <ul style="list-style-type: none"> DMP to provide details of changes between national Model WHS Act and the Resources Safety Bill: <i>Comparison table to be circulated by 29 August 2014.</i> DMP to invite an officer from WorkSafe to attend MAP when discussions on 	

Item	Topic	Action
	<p>regulations commence: <i>Awaiting drafting of regulations.</i></p> <ul style="list-style-type: none"> A working group on management and supervision will be formed after three working groups complete their work: <i>DMP to arrange Workshop.</i> DMP to meet with APPEA to discuss petroleum legislation: <i>Completed – meeting held 9 June 2014.</i> Miranda Taylor to provide copy of pilot training course on MHFs critical risks from Victoria: <i>Completed – available for members who would like a copy.</i> Greg Stagbouer to provide a copy of the Defence training model: <i>Not available as it is a restricted document.</i> Ian Fletcher to meet with CME and discuss their view on the legislation: <i>Completed – meeting held 9 July 2014. Letter from CME distributed to MAP.</i> 	
2.	Safety Legislation Reform & restructure: status report & timeline	
	<p>Safety Legislation Reform update & timeline:</p> <ul style="list-style-type: none"> The Minister's Office authorised DMP to inform MAP that the Government has given approval for Resources Safety to prepare drafting instructions for the Resources Safety Bill, and to transfer responsibility for occupational safety and health at Major Hazard Facilities (MHFs) from WorkSafe to Resources Safety. A Ministerial media release may be issued. The Resources Safety Bill initially covers mine safety only, and is based mainly on the Model WHS Act provisions added from the National Mine Safety Framework. DMP is liaising with WorkSafe to maintain consistency. More details will be available when the drafting instructions are prepared, and there will be further opportunities for comment. The timeline includes mining legislation only, with completion by mid-2016. The preferred option for consolidating other safety legislation will be identified through consultation and added to the timeline. Some parts of the process are beyond DMP's control, such as drafting of legislation by Parliamentary Counsel's Office, passing legislation through Parliament and the Regulatory Impact Statement consultation process. <p>Resources Safety Restructure</p> <ul style="list-style-type: none"> The restructure of Dangerous Goods Safety and Petroleum Safety to form the new Critical Risks Branch has been completed. The new Director Dangerous Goods and Petroleum Safety is Ross Stidolph, who has extensive industry experience. A number of other positions have been filled and further recruitment will fill the remaining vacant positions. 	<p>If Minister issues a Media Release about the Resources Safety Bill, DMP to distribute to MAP.</p>
3.	Regulatory Impact Statement: safety legislation consolidation options	
	<ul style="list-style-type: none"> A tender is being prepared to engage an external service provider to manage the consultation process, which will identify the preferred option for consolidating the safety legislation. An external provider is being used to ensure that an independent view is obtained. The service provider will: <ul style="list-style-type: none"> prepare a discussion paper on the advantages and disadvantages of each option, which will be distributed to stakeholders and added to the DMP website; facilitate a stakeholder forum session to discuss the options; prepare a Regulatory Impact Statement (RIS), which will describe in detail the advantages and disadvantages of each option, stakeholder feedback and the preferred option, with justification. DMP and the Regulatory Gatekeeping Unit will discuss the process. The tender will be finalised and issued in August 2014. It will then take three weeks to receive responses, another two weeks to select and appoint a preferred tenderer and 17 weeks to complete the RIS process. The RIS will be sent to the Minister 	

Item	Topic	Action
	<p>for a decision.</p> <ul style="list-style-type: none"> • Legislation will then need to be developed and another RIS process will be required to consult on the details of the proposed legislation. • If the RIS identifies that Option 5 (maintaining the status quo) is the preferred option, the current legislation should still be modernised. • Safe Work Australia (SWA) is working on a COAG review of the model WHS laws. The WA representative on SWA is WorkSafe, but DMP is lodging a submission to SWA and has requested direct involvement in future. • DMP's proposed legislation is based on the Model WHS Act, with mining-related provisions added from the NMSF process. Provisions that were not adopted by Western Australia were removed. WorkSafe and Resources Safety are working together to maximise consistency. • NOPSEMA is keen to work with DMP and industry on the new legislation. 	
4.	Legislation section numbering – Model vs. consecutive	
	<p>Attachment 4A: Numbering system based on the model legislation</p> <p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Harmonised with WorkSafe and other resources regulators around Australia. E.g. Section 191 of the Resources Safety Bill will be the same as Section 191 in safety and health legislation at WorkSafe and in all other States. • Simplified compliance and employee training for companies who need to meet both WorkSafe and Resources Safety requirements, and companies that also operate in other States. • Easier transitions for workers who move between industries and States. <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Numbering gaps for sections of the Act that were not adopted by WA, or do not relate to mining. E.g. Part 7 of the model Act was not adopted by WA, so the Act will have the Part 7 heading and "Intentionally left blank". <p>Attachment 4B: Consecutive numbering, with provisions in different order</p> <p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Numbering is consecutive (no gaps) and provisions are grouped in a more user-friendly order. <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Not harmonised - sequence of clauses and clause numbering will differ to WorkSafe and every other jurisdiction in Australia. Companies and employees will need to map each provision from the Resources Safety Bill to the Model WHS legislation. E.g. Section 49 in the Resources Safety Bill is Section 34A in the WHS Act used by WorkSafe and other mining States. • Contrary to harmonisation objectives. Workers transitioning between industries and between States may find it more complicated. Companies will need to cater for this in compliance and training programs. <p>Panel discussion:</p> <ul style="list-style-type: none"> • This is an important issue. The structure and numbering of the Act also affects the structure of the regulations. In addition, this legislation will be in place for many years, even though it will have statutory reviews every few years. Both approaches have their pros and cons. • Members agreed to give this further consideration, consulting their in-house legal and safety experts, and provide submissions to DMP. 	<p>MAP members to provide submissions on the preferred legislation numbering and sequencing approach by 6 August 2014.</p>

Item	Topic	Action
5.	Risk Management Principles - feedback	
	<ul style="list-style-type: none"> Under the risk-based approach, the Act and regulations will be less prescriptive, with the more detail moved into Codes of Practice or Guidelines. It is crucial that workers on the front line easily understand all of the elements of the risk-based approach. The quality of Codes of Practice and guidance material plays a key role in this. There are currently issues with inconsistency in the quality and format of the Codes of Practice developed by the various States. DMP is now defining what should go where in terms of the Act, Regulations, Codes of Practice and guidance material. Additional guidance material will be required for smaller operators, such as templates, checklists and other tools. The language and the schematic in the draft Risk Management Principles create confusion, but this should be clarified when the legislation, Codes of Practice and guidance material are developed. The requirements for Principal Hazard Management Plans (PHMPs) and Principal Control Plans (PCPs) need to be clarified. Mine sites have risk management plans, but it is unclear how these will interact with the proposed WHSMS, PHMPs and PCPs, and how these will work for large and small operators. The terminology used is also inconsistent with risk management approach used by petroleum and other high-risk industries. Risk management involves identifying hazards and developing controls for those hazards - they are not separate issues. Operators also need to have monitoring systems, performance standards and a feedback loop, to ensure that controls are functioning at all times. A Code of Practice and guidance will be developed to assist industry with complying with the PHMP and PCP requirements, but the legislation has not yet been drafted. As PHMPs and PCPs are a key part of the risk-based approach for mining, it is important to start gathering any existing guidance and working examples now, to provide clarity for industry. Workers need an easy way to access procedures and guidance material on site. Internet/phone-based systems do not work well in remote, rugged terrain. 	<p>Michael Tooma to prepare paper on how the PHMP and PCP interact.</p> <p>Richard Kern to gather some working examples of PHMPs and PCPs.</p>
6.	Issues for consideration: CME industry workshop feedback	
	<ul style="list-style-type: none"> <i>Statutory Roles:</i> Roles, responsibilities, competency and training requirements will be developed through the new Tri-State Competency Advisory Committee (TCAC), to ensure a consistent approach between WA, Queensland and NSW. Other states might join the committee. <i>Work Health and Safety Management Plans and Principal Hazard Management Plans:</i> (Discussed at Item 5 on MAP meeting agenda). <i>MIAC and consultation:</i> <ul style="list-style-type: none"> MIAC is a statutory Committee which will continue to operate, focusing on <u>current</u> mine safety and health legislation. MAP is a temporary Panel, providing advice to DMP and the Minister on the development and implementation of <u>new</u> safety and health legislation for the resources industry. A "Petroleum Industry Advisory Committee" or a combined "Resources Industry Advisory Committee" will need to be established after the consolidation of the other safety legislation is determined. <i>Fitness for work:</i> Amending the word 'drugs' to 'other substances' enables this to cover other substances, such as steroids. <i>Health monitoring:</i> The Panel discussed the requirements for medical checks. <ul style="list-style-type: none"> Periodic medicals should only be mandatory for roles that have specific medical requirements. 	<p>DMP to confirm whether WA will be adopting the model legislation requirements on fitness for work.</p>

Item	Topic	Action
	<ul style="list-style-type: none"> ○ Unions prefer worker medical checks be undertaken by an independent doctor, not a doctor of the employer's choice. Industry is concerned that this could lead to inconsistency in reporting and quality of the checks. ○ Some companies expect workers to cover the cost of follow-up medical tests, and unions disagree with this. ○ There is some concern that medical providers may be abusing the system for their own financial benefit. • <i>Consultation and safety role for works:</i> Industry believes that the decision on when to consult should be at the discretion of the principal employer. Consultation should be mandatory where a major change or high-risk issue is being considered. There needs to be some guidance for industry on this. 	Drafting instructions relating to health monitoring and consultation to be provided to MAP.
7.	Working group recommendations	
	<p>Asbestos Working Group</p> <ul style="list-style-type: none"> • The primary focus was on naturally-occurring asbestos. • The recommendations indicate that the current legislation is adequate, and the proposed new legislation will be even more comprehensive. • There is too much detail and prescription in the national model WHS legislation, mainly relating to asbestos management and removal. <p>Confined Spaces</p> <ul style="list-style-type: none"> • Recommended amendments to the national Code of Practice for work in confined spaces, clarifying the reclassification requirements (based on Mines Safety Bulletin 111) and a number of other issues listed at Recommendation 3 in their report. More examples need to be included, particularly the application of technology, such as GoPro cameras. • Recommended developing a confined spaces reclassification risk-assessment tool. <p>Guarding</p> <ul style="list-style-type: none"> • The main issue was the legislative requirement for use of a tool to remove guarding. Industry considers that a risk-based approach and the use of other technology should be permitted, rather than prescribing use of a tool. DMP and unions are concerned that removing the requirement for a tool would differ to the approach used by WorkSafe WA and other jurisdictions. • DMP needs to consider the impacts of retrofitting compliant guards to existing plant and machinery when developing the new legislation and transition period. • The Code of Practice needs amending to make language more consistent, and include more heavy plant examples to make it more relevant to the resources industry. There needs to be alignment and clarity between the Code and the risk management principles in the proposed regulations. 	<p>DMP to review statistics relating to incidents involved with guarding under the current regulatory arrangements, including other Australian jurisdictions that require the use of a tool to remove guarding.</p> <p>DMP to consider the Working Groups' recommendations and provide advice to the Minister.</p>
8.	Other Business	
	<p>Future meetings</p> <ul style="list-style-type: none"> • Meetings to be scheduled through to 2016 and MAP Terms of Reference to be amended. • Tentative meeting to be scheduled for December 2014, if needed. 	DMP to schedule meetings for Dec 2014 to mid-2016 and amend Terms of Reference
9.	Next Meeting	
	<ul style="list-style-type: none"> • The next meeting is Wednesday 24 September 2014, 8:30am – 10:30am. 	



File No: A1375/201301

ACTIONS LIST – 23 July 2014

Ministerial Advisory Panel

Active Actions

ACTION ITEM		DUE DATE	STATUS
1.	Meeting 22 January 2014		
	MAP members would like to be kept informed of the internal restructure.	ongoing	Standing agenda item: DMP to provide updates on the progress of the RSD restructure as information becomes available.
2.	Meeting 26 March 2014		
	Department to provide details (the 5% changes) of changes between the national model and the WHS Resources Bill.	29 Aug 2014	Comparison table to be provided to MAP for comment by 29 August 2014.
	DMP to invite an officer from WorkSafe to join MAP when the discussions on the regulations commence.	TBA	WorkSafe to be invited when discussions on regulations commence.
3.	Meeting 28 May 2014		
	A working group on management and supervision will be formed after the current groups complete their tasks.	24 Sept 2014	Management and Supervision Workshop to be arranged. DMP is collating industry feedback for the Workshop discussion paper.
4.	Meeting 23 July 2014		
	Michael Tooma to prepare paper on how the PHMP and PCP interact.	5 Sep 2014	
	Richard Kern to provide some working examples of PHMPs and PCPs.	5 Sep 2014	
	DMP to confirm whether WA will be adopting the model legislation requirements on fitness for work.	24 Sep 2014	Fitness for work requirements will be provided when drafting instructions for the regulations are prepared.
	Drafting instructions relating to health monitoring and consultation to be provided to MAP.	24 Sep 2014	Health monitoring requirements will be provided when drafting instructions for the regulations are prepared. Consultation requirements will be the same as Part 5 in the model WHS Act.
	DMP to review statistics relating to incidents involved with guarding under the current regulatory arrangements, including other Australian jurisdictions that require the use of a tool to remove guarding	24 Sep 2014	
	DMP to consider Working Groups' recommendations and provide advice to the Minister.	24 Sep 2014	

ACTION ITEM		DUE DATE	STATUS
	DMP to schedule meetings for December 2014 through to mid-2016 and amend MAP Terms of Reference to reflect this.	8 Aug 2014	Meeting dates responses due 5/8. Amended Terms of Reference drafted

Completed Actions

ACTION ITEM		DUE DATE	STATUS
1.	Meeting 22 January 2014		
	Panel members to confirm their proxies before 28 January 2014.	28 January 2014	Completed Proxies approved by the Minister
	Include in terms of reference out of session tacit approval of minutes	1 February 2014	Completed Terms of reference amended and approved by Minister
	The Panel would like clarity what the WA government is not willing to compromise on in the WHS legislation.	26 March 2014	Completed Confirmation of the issues the government is not willing to consider changing in the WHS legislation: Previously, the government had views on four specific areas - penalty levels, union right of entry, health and safety representatives' capacity to direct the cessation of work, and reverse onus of proof in discrimination matters. The Department understands that the level of penalties is subject to some discussion, but the position on the other items remains unchanged.
	Mr Tooma's presentation to be distributed to Panel members with the minutes.	28 January 2014	Completed Emailed to members on 28 January 2014
	Project team to provide a diagram of the restructure proposed within RSD.	26 March 2014	Completed Distributed with the agenda for meeting 26 March 2014
	If Safework Australia put out a table of amendments for the mining WHS legislation, the Panel would like a copy.	26 March 2014	Completed Safework Australia does not have a table for the mining amendments. DMP will continue to monitor.
	Panel members to provide feedback on the Petroleum Discussion Paper by 12 February 2014.	12 February 2014	Completed Comments received. Summary provided with MAP agenda papers for 26 March meeting.
2.	Meeting 26 March 2014		
	Project team to send an invitation and details of the Professor Sparrow presentations to members. Members to respond with their preference to attend one of or all of the sessions.	26 March 2014	Completed Email to members sent 26 March 2014
	MIAC minutes to be attached to the meeting papers.	2 April 2014	Completed Link to MIAC minutes sent 26 March 2014
	Project team to send the link to the model regulations and members to come back to DMP by the end of April with any concerns.	30 April 2014	Completed: Email containing links to the Safework Australia website sent to members 2 April 2014
	Project team to coordinate members for the working groups, and terms of reference for the groups.	30 April 2014	Completed: ToR drafted, nominations received, meetings scheduled.
	Department to meet with Nick Zovko to discuss the GHS.	30 April 2014	Completed

ACTION ITEM		DUE DATE	STATUS
	DMP to meet with APPEA to discuss the petroleum legislation.	30 April 2014	Completed Meeting held 9 June 2014: Agreed that a Regulatory Impact Statement will be used to consult stakeholders on options for consolidating safety legislation
	Miranda Jane Taylor to provide a copy of pilot training course on MHFs critical risks from Victoria.	28 May 2014 23 July 2014	Completed Available for any members who would like a copy.
	Greg Stagbouer to provide a copy of the Defence training model.	28 May 2014 23 July 2014	The RAAF Training Program is not available as it is a restricted document.
3.	Meeting 28 May 2014		
	The dangerous goods presentation to be sent to members with the minutes.	4 June 2014	Completed
	Ian Fletcher to meet with the CEO of the CME and possibly the CME safety committee to discuss their view on the legislation.	23 July 2014	Completed - Meeting held 9 July 2014. Letter from CME distributed to MAP members with agenda papers.
4.	Meeting 23 July 2014		
	If Minister issues a Media Release about the Resources Safety Bill, DMP to distribute to MAP.	TBA	Minister's Office subsequently advised DMP that they might not issue a media release.
	MAP members to provide submissions on the preferred legislation numbering and sequencing approach by 6 August 2014.	6 Aug 2014	Completed MAP preferred numbering based on the Model WHS Act – email sent to confirm 7/8/2014