



## AGENDA – Guarding Working Group

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Date:	Wednesday 9 July 2014	Time:	10:30am – 12:00pm
Venue:	Level 8 South, DG's Conference Room Mineral House – 100 Plain Street, East Perth		

Item No.	Item	Who
1.	Welcome, apologies, actions from previous meeting	Chair
2.	Review notes from previous meeting	Working group
3.	Findings & recommendations for MAP	Working group
4.	Other business	Work Group
5.	Next Meeting: <i>TBD</i>	

### Information Papers:

- Guarding – draft recommendations

### References:

- Extracts from MSIR, model WHS regulations, Australian Standard
- [Code of Practice Safeguarding of Machinery and Plant](#)



File No: A0863/201401

## MEETING MINUTES – Guarding Working Group

Date:	Wednesday 9 July 2014	Time:	10:30am - 12:10pm
Venue:	Level 8 South, DG's Conference Room Mineral House – 100 Plain Street, East Perth		

### Present

Mr Richard Kern	Facilitator (MAP member representing Chamber of Minerals and Energy WA -CMEWA)
Ms Jennifer Low	Policy Advisor, Chamber of Commerce and Industry WA (CCI WA)
Dr Neil Woodward	Regional Inspector of Mines North, Department of Mines and Petroleum (DMP)
Ms Belinda Stuckenberg	Manager Safety Improvement, BHP Billiton (representing Chamber of Minerals and Energy WA - CMEWA)
Mr Ben Morgan	Senior Health and Safety Advisor, CSBP (representing Plastics and Chemicals industries Association - PACIA)
Mr Rick Armstrong	Principal Drilling Coordinator, Rio Tinto (representing Australian Drilling Industry Association - ADIA)
Mr Stephen Price	Branch Secretary, Australian Workers' Union (representing Unions WA)
Mr Chris Verran	Senior HSETQ Coordinator, Wallis Drilling (representing Australian Drilling Industry Association - ADIA)
Mr Eric Manning	HSE Coordinator, Monadelphous (representing Australian Pipeline Industry Association - APIA)
Mr David Eyre	A/Principal Policy Officer, Department of Mines and Petroleum (DMP)

### Apologies

Mr Jennifer Shelton	Principal Policy Officer, Department of Mines and Petroleum (DMP)
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### Agenda items

Item	Topic	Action
1.	<b>Welcome, apologies, actions from previous meeting</b>	
	<ul style="list-style-type: none"><li>The Chair welcomed members to the second and final meeting of this working group.</li></ul> <p><u>Actions from previous meeting:</u></p> <ul style="list-style-type: none"><li>Terms of Reference to be uploaded to website: <i>Completed</i></li><li>DMP to provide extracts from WHS legislation relating to imported machinery: <i>Completed</i></li><li>Risk Management provisions for the proposed Act to be distributed to the Guarding working group for their information: <i>Completed</i>.</li><li>Members to review code of practice before the next meeting to ensure there's flexibility in the Code: <i>Completed</i>.</li></ul>	
2.	<b>Review notes from previous meeting</b>	
	<ul style="list-style-type: none"><li>The notes in the previous minutes were discussed at item 3.</li></ul>	

Item	Topic	Action
3.	<b>Findings and recommendations for the Ministerial Advisory Panel</b>	
	<ul style="list-style-type: none"> <li>The proposed regulatory framework will comprise of the Act and Regulations, supported by Codes of Practice and Guidelines. The risk-based approach allows operators flexibility in addressing the regulatory requirements, based on the scale and complexity of their mining operation, using the hierarchy of controls. The legislation will not refer to Australian Standards.</li> <li>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.</li> <li>Language in the Code of Practice is inconsistent - it should include recommendations and examples of good practice, not prescriptive directions unless necessary to align with the regulations. The Code mentions things you “must” do as per the regulations. 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. Any measure should therefore be more effective than the minimum compliance.</li> <li>The group discussed whether a mining-specific Code 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 WA and continue with a joint Code, rather than developing specific Codes for mining and petroleum.</li> <li>The Code should include more examples related to heavy plant (mining, petroleum, civil, drilling), to make it more relevant to the resources industry.</li> <li>The group discussed regulation 6.2(2)(f) in the Mines Safety and Inspection Regulations, which is similar to the guarding provisions in the Model WHS regulations (regulations 189, 194, and 208): <ul style="list-style-type: none"> <li>(2) <i>As a minimum, consideration should be given to the following methods of risk reduction —</i></li> <li>(f) <i>ensuring that any guarding provided for plant and its operation comprises —</i> <ul style="list-style-type: none"> <li>(i) <i>a permanently fixed physical barrier — where no person requires complete or partial access to the dangerous area during normal operation, maintenance or cleaning;</i></li> <li>(ii) <i>an interlocked physical barrier — where a person may require complete or partial access to the dangerous area during normal operation, maintenance or cleaning; or</i></li> <li>(iii) <i>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),</i>  <i>but, if none of the guards described in subparagraphs (i), (ii), or (iii) are practicable, by providing a presence sensing safeguard system;</i></li> </ul> </li> </ul> </li> <li>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).</li> </ul>	

Item	Topic	Action
	<ul style="list-style-type: none"> <li>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 guideline, 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. WorkSafe have advised DMP that they will be retaining this requirement and DMP wishes to align with Worksafe. The group could not reach agreement on this issue.</li> <li>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 will disregard this requirement.</li> <li>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. There should be prioritisation, based on a risk-based approach. It should be linked to any plans in the relevant Principal Control Plans. Some other States had issues with their transition period and had to extend it.</li> <li>The requirements for importers of plant and equipment are adequately covered under the section 24 of the Model Act, and regulations 6.9 and 6.10 in the current Mines Safety and Inspection Regulations.</li> <li>The group considered that all other points from the previous minutes were covered by the draft recommendations in the Working Group's report to MAP.</li> <li>The MAP papers, including the report from this working group, need to be finalised by 15 July 2014, for discussion at the 23 July 2014 MAP meeting.</li> </ul>	<p>DMP to distribute draft minutes and report to members by 10 July 2014.</p> <p>Members to provide any amendments to DMP by 12pm on Friday 11 July 2014, for DMP to collate and distribute the same day.</p> <p>Members to provide final comments to DMP by 12pm Monday 14 July 2014</p>
<b>4.</b>	<b>Other Business</b>	
	<ul style="list-style-type: none"> <li>MAP and DMP will consider the group's recommendations for inclusion in the new legislation and Code of Practice, which should be ready for consultation in 2016. There will be opportunities for further consultation through MAP and a Regulatory Impact Statement.</li> </ul>	
<b>5.</b>	<b>Next Meeting</b>	
	<ul style="list-style-type: none"> <li>No further meetings required.</li> </ul>	



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