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Safe Work Australia  
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Dear Sir / Madam

### **Model Work Health and Safety Regulations and Codes of Practice**

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia funded by its member companies who generate 95 per cent of all mineral and energy production and employ 80 per cent of the resources sector workforce in the State.

The Western Australian resources sector is diverse and complex covering exploration, processing, downstream value adding and refining of over 40 different types of mineral and energy resources and also includes power generation.

CME co-ordinates and facilitates collaborative efforts to improve safety and health across the Western Australian resources industry through an extensive network of safety and health professionals within the sector. CME also plays an active role in the development of general and mining occupational health and safety policy in Western Australia through its membership of the State's Commission for Occupational Safety and Health and the Mining Industry Advisory Committee. In relation to mining safety laws CME has been an active participant in the National Mine Safety Framework (NMSF) Steering Group since its commencement in 2005.

A joint industry submission (Joint Submission) on the exposure draft of the Mining Model Workplace Health and Safety Regulations 2010 (Core Regulations) has been prepared by the Minerals Council of Australia (MCA) and endorsed by various industry bodies.

CME was involved in the working group that produced the Joint Submission. Whilst CME and MCA have diverging opinions as to how the harmonised regime should be implemented, the Joint Submission largely reflects CME's views regarding the Core Regulations.

MCA prepared a separate submission on the mining specific codes of practice that were released with the Core Regulations. CME was also involved in the working group that produced this submission. CME has endorsed the MCA submission on the mining specific codes of practice.

This document will set out CME's overall policy position regarding the implementation of the new regime and elaborate the key concerns and issues CME has with the Core Regulations.

### **CME overall policy position**

CME supports the broad principle of national harmonisation of occupational health and safety laws. CME however, also argues for the continuation of state mining specific laws which are consistent with, but do not duplicate the national general occupational health and safety laws. This approach allows hazards and risks specific to the mining sector to be efficiently and effectively addressed. This approach also reflects the current situation in WA where the mines safety legislation is aligned to the general occupational health and safety legislation while still retained in a separate statute.

CME considers the appropriate mechanism for delivery of the model legislation should be left to the States, conditional on its alignment to the Model provisions. In CME's view uniformity can be achieved by consistency in the intent behind legislation in each jurisdiction and not necessarily through identical language in the legislation.

CME shares the Western Australian Government position in that it supports the majority of the Model Work Health and Safety Act (Model Act) but opposes it on four points. These four points are the level of penalties, union right of entry, the power of Health and Safety Representatives to stop work and the reversal of the onus of proof in discrimination cases. CME therefore opposes any regulations based on these four aspects of the Model Act

### **Jurisdictional Notes**

As stated above, CME considers the States and Territories should determine the delivery of the new regime within each jurisdiction. The new regime will not operate in a vacuum and will operate in the context of other related legislation (such as legislation regulating the transport and railways industries). The new work health and safety laws must be implemented in a manner that allows it to operate cohesively with other laws. CME considers it is imperative the Western Australian government retain the ability to adapt the new regime so that it does not interfere with the operation of other legislation.

### **Adequacy of the Core Regulations**

As referred to in the issues paper released with the Core Regulations, New South Wales, Queensland and Western Australia are working to produce a set of non-core regulations. CME considers that the Core Regulations alone are inadequate to regulate mining. CME considers some further regulations specific to mining are required to supplement the Core Regulations and is therefore supportive of the request for further regulations whilst acknowledging the existing non-core regulations are over prescriptive.

It is CME's position that essential elements of the non-core regulations could be properly moved to the Core Regulations or into codes of practice. The majority of mining for Australia occurs in the states participating in the non-core process and it would be a disappointing outcome if at the end of the harmonisation process a minority of mines is subject to a lower standard in health and safety. CME would welcome a formal re-evaluation by the NMSF and Safe Work Australia of whether elements of the non-core regulations can be moved into the Core Regulations or Codes.

### **Definition of Mining Operations**

The definition of mining operations largely determines the boundaries of the Core Regulations. This definition is broad as it encompasses not only activities understood as mining in the strict sense ("*extracting minerals from the ground*") but also activities "*carried out for or in connection with*" mining in the strict sense. This definition could potentially cover activities such as building accommodation villages and offices at the mine site.

CME notes in the non-core drafting instructions the drafting instruction provided for the definition of mining operations is:



*"Mining operations which captures all activities associated with the extraction of Minerals including exploration for minerals, mining of minerals, processing of minerals associated with a mine, tailings, spoil heaps, all waste dumps, decommissioning or rehabilitation of a mine and operational work associated with those activities including the excavation, removal, handling, transport and storage of minerals, substances, contaminants and wastes, the construction, operation, maintenance and removal of plant and buildings and any mine tourism (including mine education and mine research activities conducted at a mine). The definition must also include preparatory, maintenance and repair activities associated with the mine."*

This drafting instruction lists a broader range of activities than those listed in regulation 9.1.2(2) of the Core Regulations. There needs to be clarification as to whether the definition in the core regulations is as expansive as definition contemplated by the non-core drafting instructions.

It is important some further clarity be introduced as to where the boundaries of the Core Regulations lie. CME recommends the list of examples of mining operations in 9.1.2(2) be expanded for this purpose. CME favours a broad definition of mining operations but also considers the definition of mining operations should have some geographical proximity to the site where mining operations occur in the strict sense (ie. where the exploration for or the extraction of minerals takes place).

#### **Guidance regarding potentially overlapping regulations**

In evaluating the Core Regulations, it is important to consider how these regulations will fit within the Model Work Health and Safety Regulations (Model Regulations). CME believes there needs to be some further clarity as to how the Core Regulations interact with the regulations in the Model Regulations regarding construction and major hazardous facilities.

In the Model Regulations construction work does not include *"mining or the exploration for or extraction of minerals"*. It is unclear whether *"mining"* in this context means *"mining operations"* for the purposes of the Core Regulations. Construction works carried out on a mine site could therefore potentially fall within the meaning of mining operations. There is also potential for the Core Regulations to intersect with the regulations on Major Hazardous Facilities. If there is some overlap in these regulations, a further regulation providing guidance on what provisions will prevail in the event of inconsistency should be inserted to either the Core Regulations or Model Regulations.

#### **Level of prescription and unnecessary duplication**

CME considers the level of detail surrounding the regulations on Principal Hazard Management Plans to be too prescriptive. Some of the specific hazards listed in regulation 9.1.4(a) will not be relevant to some operations. CME considers that regulation 9.1.4(a) could be deleted. CME also considers that the matters set out in schedule 9.2 (Principal Hazard Management Plans) which a mining operator must have regard to, which are already largely set out in codes of practice, do not need to be in the regulations.

There is also a level of unnecessary duplication in the Core Regulations that can be removed. Regulations 9.2.21(3) for example appear to be a replication of the how to apply the hierarchy of controls should be applied which is already set out regulation 9.2.3.

Under regulation 9.2.6 the WHS Management System requires the inclusion of a ventilation control plan *"prepared in accordance with regulation 9.2.18."* Regulation 9.2.18 applies only to underground mines and offers little substantive guidance and appears to merely duplicate the requirement that the controls be documented. The examples listed under regulation 9.2.18 are more helpful but are more appropriately placed in a code of practice.



The risk associated with a prescriptive approach is that circumstances and hazards unique to a particular mine not specifically listed in the regulations will not be considered. Regulation 9.2.17 for example purports to set out control measures for dust explosions at all underground mines, yet seems to focus on coal dust explosions ignoring other kinds of dust explosions. In some underground mines a risk of sulphide dust explosions may exist. The control measures listed in 9.2.17(2) and the order of those controls are not applicable to the risk of sulphide dust explosions. It is recommended that some of the prescription be removed from regulation 9.1.17 so that only 9.2.17(1) remains. If further guidance is required on how to control the risk of coal dust explosions this could be placed in a code of practice.

#### **Clearer differentiation between different kinds of mines and structure**

CME considers the overall structure of the Core Regulations could be enhanced. The Regulations purport to apply to all mines but certain obligations apply only to metaliferous or underground coal. The overall structure of the regulations could be enhanced if the regulations that apply to a type of specific mine are grouped together where possible.

#### **Absence of reciprocal duties on workers**

The absence of reciprocity in the Core Regulations is another source of concern for CME. In CME's view, the new regime should foster a collaborative approach between workers and the mine operator to work towards the creation of a safety culture in the workplace. The introduction of reciprocal duties on workers in the Core Regulations would also be consistent with the recommendations made in the reports of the National Review into the Model Occupational Health and Safety Laws and section 28 of Model Act.

Whilst the Model Act imposes duties on workers to take reasonable care of their own health and safety, the health and safety of others, and to comply with reasonable instructions and policies, it does not require the worker to proactively support the PCBU's efforts comply with the Model Act and Model Regulations. The Model Regulations and the Core Regulations should encourage this approach from workers.

The regulations on worker fatigue are one example where some kind of reciprocal obligation on workers could be imposed. Whilst regulation 9.3.1 requires mine operators to implement strategies for the control of any risks to health and safety associated with worker fatigue there is no obligation on workers adversely effected by fatigue to disclose this to the mine operator.

#### **Emergency Planning**

The principles in the Core Regulations provide a framework from which individual companies can develop their own respective emergency response plans. These frameworks should however be aligned to the arrangements under existing emergency management legislation in the various states. CME recommends the use of jurisdictional notes to allow the Core Regulations to be better aligned the emergency management legislation existing in each jurisdiction.

Regulation 9.2.37 requires "*2 means for existing the mine in addition to the hosing shaft any other normal exit*". In the case of many Western Australian underground mines, three points of egress is not practicable or achievable. Many underground metaliferous mines generally use a strategy of one independent means of escape combined with specifically constructed refuge chambers that are located within a reasonably reachable distance from working areas.

CME is concerned some of the regulations on emergency planning may have limited applicability in the context of remote mines or remote exploration activities in Western Australia. Regulation 9.2.32 for example requires the emergency plan to ensure the "*establishment of a system that enabled all persons at the mine to be promptly located.*" CME believes a system that allows persons to be promptly "*accounted for*" would be a more appropriate standard that could be applied to all mining operations.

Regulation 9.2.35 requires the Mine Operator to test the emergency plan in conjunction with the emergency services and other emergency response providers consulted in preparing the plan at least once a year. Emergency services and emergency response providers in many remote locations may not be available to participate in yearly tests. CME submits the regulation should be qualified by the standard of "as far as reasonably practicable".

### **Drugs and Alcohol**

The emergence of synthetic drugs as an issue in the workplace highlights the need for a flexible risk based approach to drugs and alcohol to ensure the safety of workers. The definition of "*adversely affected by drugs and alcohol*" must be able to capture emerging substances that may have a deleterious effect for which there are no exposure standards. CME therefore opposes a definition of "*adversely affected by drugs and alcohol*" that is linked to exposure standards.

The regulations on drugs should also apply to persons' who's consumption of drugs and alcohol places them "*at risk*" of becoming "*adversely affected by drugs and alcohol.*" This would be consistent with a risk based approach and help Mine Operators safeguard against the risk of new emerging substances (for which there may be limited information regarding the duration of the effects). It is therefore recommended that regulation 9.3.3 be extended to also require:

*"a worker who's consumption of drugs and alcohol has placed them at risk of being adversely affected by drugs and alcohol must notify the Mine Operator of this risk and not enter or remain at the mine unless authorised to do so by the Mine Operator."*

### **Health Monitoring**

Regulation 9.3.5 provides for a health monitoring summary to be provided to the mine operator and what information that summary should cover. The summary should provide also any information about characteristics specific to the person that might increase or alter a person's risk profile. This will enhance the Mine Operator's ability to manage the safety of workers at the mine.

### **Qualification of absolute duties**

There a number of regulations in the Core Regulations which provide that the Mine Operator "must" do certain things or ensure certain outcomes. As the mine operator will very rarely exercise absolute control over all circumstances, these duties should be qualified by the standard of "*as far as reasonably practicable*".

If you have any questions regarding the issues outlined in the CME's submission, please contact David Todd, Executive Officer Occupational Safety and Health on (08) 9220 8520 or email [d.todd@cmewa.com](mailto:d.todd@cmewa.com).

Yours sincerely



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