

28 July 2017

Hon. Adele Farina MLC
Chairperson
Public Administration Committee
Legislative Council Committee Office
GPO Box A11
PERTH WA 6837

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Dear Chairperson,

INQUIRY INTO WORKSAFE WESTERN AUSTRALIA

The Chamber of Minerals and Energy of Western Australia (CME) appreciates the opportunity to provide a submission to the Standing Committee on Public Administration's inquiry (the Inquiry) into WorkSafe Western Australia (WorkSafe WA).

CME is the peak resources sector representative body in Western Australia (WA). CME is funded by its member companies who are responsible for most of the State's mineral and energy production and are major employers of the resources sector workforce in the State.

In 2015-16, the value of WA's mineral and petroleum production was \$87.9 billion. Iron ore accounted for approximately \$48 billion of production value to be the state's most valuable commodity. Petroleum production (including LNG, crude oil, condensate, natural gas and LPG (butane and propane)) followed at \$18.4 billion with gold third at \$10 billion¹.

The sector is a major contributor to the state and the Australian economy. The estimated value of royalties the state received from the resources sector composed almost 15 per cent of estimated total state revenue in 2015-16, or around \$3.8 billion.

The WA resources sector places the highest priority on ensuring the safety and health of the workforce. CME recognises the role of the regulator in providing direction, establishing the framework and strategy for regulatory oversight, assisting companies to manage risks and supporting continuous improvement efforts.

Findings and recommendations

A summary of recommendations is included below with further supporting detail outlined in the following submission.

- CME has previously indicated and repeats its support for, resources sector representation on the Commission for Occupational Safety and Health (COSH).
- Given the important role COSH plays in providing advice to the Minister, CME considers it critical COSH is provided with sufficient policy development secretarial support to enable it to effectively fulfil its function.
- CME strongly supports the ongoing collaborative relationship with WorkSafe WA through its COSH representation and appreciates WorkSafe WA's professionalism in working with

¹ Department of Mines and Petroleum, 2016 *Mineral and Petroleum Industry 2015-16 Review*, <http://www.dmp.wa.gov.au/About-Us-Careers/Latest-Statistics-Release-4081.aspx> pg. 1

members to identify areas for improvement and develop strategies to achieve better safety and health outcomes.

- CME recommends WorkSafe WA continue to operate as a separate inspectorate to Resources Safety within the Department of Mines, Industry Regulation and Safety (DMIRS) with each inspectorate possessing the appropriate skills and experience to regulate their respective industries.
- The ongoing funding of WorkSafe WA is critical to ensure they are able to be a proactive, progressive and highly competent regulator with a focus on legislative reform, compliance and education.
- To ensure the best outcome, the development of new WHS legislation should include robust consultation with stakeholders, and engagement with COSH on the proposed changes.
- CME considers it critical safety legislation reforms are prioritised and WorkSafe WA is allocated adequate resources to continue to support the development of the new single Act and supporting regulations.
- To ensure industry can continue to have confidence in the high risk work training and assessment system it is critical WorkSafe WA work effectively with the relevant regulators (e.g. Training and Accreditation Council and Australian Skills Quality Authority), to ensure regulatory oversight of high risk work training and assessment. An agreement should be established between these regulators to enable collaboration and information sharing to ensure compliance issues can be proactively identified and addressed.

CME and WorkSafe WA

Regulatory oversight of workplace health and safety for CME's member companies lies primarily with the Resources Safety Division of the recently amalgamated Department of Mines, Industry Regulation and Safety (DMIRS). However, there are a number of situations where resource sector companies interact with WorkSafe WA. These include:

- offices not on a mining operation;
- where major construction occurs on a mining operation;
- where the operation is a major hazard facilities (MHF) facility;
- when registering or re-registering certain items of plant;
- in certain situations, when registering plant design or altering plant design; and
- obtaining high risk work licenses.

WorkSafe WA are involved in a regulatory capacity in these situations under the *Occupational Safety and Health Act 1984* (OSH Act). In this context, CME has focused this submission on areas of the Inquiry terms of reference most relevant to the nature of the resource industry and CME's interaction with WorkSafe WA.

CME works closely with WorkSafe WA on a number of key policy issues relevant to the resources sector through our representation on the Commission for Occupational Safety and Health (COSH), which has a statutory role, separate to WorkSafe WA, under the OSH Act.

CME considers COSH plays an important role in providing expert advice and industry specific views to WorkSafe WA and the Minister on policy and legislative matters and providing input into the development of educational and other materials aimed at raising safety and health standards across all workplaces.

However, CME notes there is an opportunity to further enhance the important role of COSH by providing strong secretariat support to ensure COSH is able to effectively discharge core statutory functions such as:

- (a) *to inquire into and report to the Minister upon any matters referred to it by the Minister; and*
- (b) *to make recommendations to the Minister with respect to —*
 - (i) *this Act; and*
 - (ii) *any law or provision of a law, relating to occupational safety and health that is administered by the Minister and any law or provision of a law relating to occupational safety and health that is prescribed for the purposes of this paragraph; and*
 - (iii) *subsidiary legislation, guidelines and codes of practice proposed to be made under or for the purposes of any prescribed law;*

CME has previously indicated and repeats here its support for, resources sector representation on COSH.

Given the important role COSH plays in providing advice to the Minister, CME considers it critical COSH is provided with sufficient policy development and secretarial support to enable it to effectively fulfil its function.

Currently, there are a number of areas where COSH members are working with WorkSafe WA to support education and continuous safety and health improvement. For example, at the recent July 2017 meeting COSH endorsed a set of education materials to promote awareness of the risks of slips, trips and falls. WorkSafe WA has supported this work from the outset and will now work with COSH members to implement the agreed strategy.

CME strongly supports the ongoing collaborative relationship with WorkSafe WA through its COSH representation and appreciates WorkSafe WA's professionalism in working with members to identify areas for improvement and develop strategies to achieve better safety and health outcomes.

Well Resourced Inspectorate for Resources and General Industry

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

CME has consistently expressed support for the maintenance of WorkSafe WA and Resources Safety as separate inspectorates to enable each to possess the specialist skills required to regulate occupational safety and health in their respective sectors. Different skills are required in this way due to the fundamentally different hazards and risk profiles associated with the mining, oil and gas and pipelines (the resources sector) industries as opposed to general industry.

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

- the 2003, National Mine Safety Framework Implementation Plan Discussion Paper made recommendations in support of a professional and technically competent mines inspectorate with appropriate industry experience and qualifications²;

² Conference of the Chief Inspectors of Mines, National Mine Safety Framework Implementation Plan, Discussion Paper, October 2003, http://www.ga.gov.au/image_cache/GA2663.pdf

- in 2014, the Third Audit of the Mine Safety Unit and Office of Chief Inspector of Mines in Tasmania championed the historical specialisation of inspectors in Queensland. The report emphasised that a high level of expertise of mines inspectors was critical to allow them to identify and resolve concerns that may have otherwise led to serious accidents³;
- one of the key findings into the 2010 Pike River Coal Mine tragedy was that an underlying cause of the accident was the 'inadequately resourced and skilled inspectorate'.⁴

Following the WA State Election in March 2017, the McGowan Labour Government announced extensive machinery of government changes. Included in these changes was the amalgamation of the Department of Mines and Petroleum and the Department of Commerce to form the new Department of Mines, Industry Regulation and Safety.

CME supports the approach taken to date to maintain separate divisions and inspectorates within DMIRS and is pleased that in announcing the new direction of workplace health and safety legislative reforms the Minister for Mines and Petroleum; Hon Bill Johnston MLA (the Minister) has acknowledged the unique nature of the resources sector and the need to accommodate risk based approaches.

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

CME recommends WorkSafe WA continue to operate as a separate inspectorate to Resources Safety within DMIRS with each inspectorate possessing the appropriate skills and experience to regulate their respective industries.

Given CME members primarily interact with Resources Safety inspectors, members have not raised specific issues regarding the skill set of WorkSafe WA inspectors in response to the Inquiry. However, noting the recommendation above, the resources industry considers it is critical inspectors with appropriate skills and industry specific expertise are available to support continuous improvement and compliance activities regardless of industry sector.

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

While CME does not generally support cost recovery for the functions and operation of government, the resources industry has accepted cost recovery of Resources Safety in order to ensure the division and inspectorates are appropriately trained and resourced to meet the shared objectives of improving safety and health outcomes across the sector.

A review of WorkSafe WA's funding over recent years shows the total funding received from the State Government was reduced by almost 27 per cent between the 2014-15 and 2015-16 financial years. This is despite the net cost of WorkSafe WA's services falling by only six (6) per cent. Furthermore, resourcing of inspections and investigations has experienced major cutbacks with the average cost falling from \$909.71 per inspection or investigation in 2013-14 to \$539.2 in 2015-16.⁵
⁶ This represents a 40 per cent reduction.

³ Michael Quinlan, Third Audit of the Mine Safety Unit and Office of Chief Inspector of Mines, Worksafe Tasmania, April 2014, http://worksafe.tas.gov.au/_data/assets/pdf_file/0008/288845/Quinlan_Report_2014.pdf

⁴ Government of New Zealand, Royal Commission on the Pike River Coal Mine Tragedy, 2012, [http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-Two/\\$file/ReportVol2-whole.pdf](http://pikeriver.royalcommission.govt.nz/vwluResources/Final-Report-Volume-Two/$file/ReportVol2-whole.pdf)

⁵ Government of Western Australia, Department of Commerce, Annual Report 2015 – 2016 https://www.commerce.wa.gov.au/sites/default/files/atoms/files/doc_ar_2015-2016.pdf

⁶ Government of Western Australia, 2015-2016 Budget, Volume 2 http://static.ourstatebudget.wa.gov.au/15-16/2015-16-wa-state-budget_bp2_vol2.pdf?

CME considers regulatory cost savings and service delivery efficiencies are necessary in the current economic environment and acknowledges the efforts of WorkSafe WA to maintain a relatively consistent level of service delivery through inspections over this time. Going forward it will be important to monitor the impact of these cost reductions to ensure they do not impact negatively on WorkSafe WA's ability to lead regulatory reform while providing the necessary education programs to support industry adapt to those changes.

The ongoing funding of WorkSafe WA is critical to ensure they are able to be a proactive, progressive and highly competent regulator with a focus on legislative reform, compliance and education.

Legislation

CME has consistently supported the reform of work health and safety (WHS) legislation in Western Australia to move away from prescription and towards best practice risk based and outcome focused approaches. Since 2009, there have been numerous attempts to achieve this. These attempts have involved lengthy consultation with industry, unions and community groups and resulted in formulation of the Green Bill in 2016.

Although this Bill has been through extensive consultation and review, due to the change in State Government in March 2017, it was never passed through Parliament. CME was broadly supportive of the Green Bill (WHS general industry) and the WHS (Resources) Bill noting full support would be contingent on adoption of recommendations contained in our submission and a full review of the detail contained in regulations.

The Minister recently announced the Government will now to work to consolidate WHS General Bill (General) and (WHS Resources) Bill into a single Act, with industry specific regulations sitting beneath it. The Minister has also indicated the development of the Bill will involve extensive consultation with stakeholders and the community, prior to expected introduction to State Parliament in mid-2019.

Given the new approach to these reforms, CME reiterates the need for further robust consultation to ensure legislation supports continuous improvement and compliance activities and does not impose unnecessary prescription on industry.

Moving to a single Act with subordinate regulations also offers the opportunity to provide jurisdictional clarification. As noted above there are a number of areas where the resource industry may interact with WorkSafe WA. This can create jurisdictional ambiguity for example when an operation moves from construction to operation.

To ensure the best outcome, the development of new WHS legislation should include robust consultation with stakeholders, with COSH having a key function on advising the Minister on the proposed changes.

The continued progress of these reforms is a key matter before COSH and is particularly relevant to this inquiry's terms of reference '*g) legislative and jurisdictional issues*'. CME notes a number of the priority projects on the COSH risk register are on hold pending clarity on the direction and outcome of these important legislative reforms. Furthermore, the length of time that has elapsed since the reforms began means the OSH Act is now significantly overdue for review, further increasing the importance of continuing to progress modernised legislation to ensure legislation is consistent, risk-based and focused on improving safety and health outcomes.

CME considers it critical safety legislation reforms are prioritised and WorkSafe WA is allocated adequate resources to continue to support the development of the new single Act and supporting regulations.

High Risk Work Licenses and Assessors

High risk work licenses (HRWL) are a common requirement in the resources sector for roles such as dogging, rigging and scaffolding. The issuance of HRWL and the accreditation of high risk work licensing assessors are administered by WorkSafe WA in accordance with nationally consistent arrangements. Administration, regulation and quality assurance of high risk work licensing training is undertaken in Western Australia by the vocational education and training regulator, Training Accreditation Council (TAC), or for national training providers, the Australia Skills Quality Authority (ASQA).

There have been concerns expressed by industry and training providers with the delivery, assessment and verification of high risk work licence training with a number significant incidents having occurred previously. This is not an issue peculiar to Western Australia or the resources sector.

In 2015, CME hosted a High Risk Work Roundtable attended by all of the regulatory authorities governing high risk work. At this meeting, representatives acknowledged concerns regarding the current HRWL system including the existence of regulatory silos limiting the exchange of data and information across regulators and facilitating a passive audit regime. It was noted regulatory oversight could be improved through further collaboration and information sharing between TAC and WorkSafe WA.

Further to these discussions, TAC undertook a strategic industry audit of high risk work training and assessment. Thirty five percent of Registered Training Organisations (RTO) audited were found to have high levels of noncompliance; 25 per cent being significantly non-compliant and 10 per cent critically non-compliant. The audit highlighted high levels of noncompliance regarding assessment practices with 55 per cent of RTOs found to be non-compliant with the assessment requirements across the standards.⁷

The findings of this audit confirmed industry concerns regarding the quality of high risk work training and assessment. As a consequence industry is having to introduce systems to verify the competency of HRWL holders and in some cases needing to retrain employees on material that should have been covered in high risk work training, to ensure they can undertake this work safely.

CME notes since the time of the audit both TAC and WorkSafe WA have taken measures to improve regulatory oversight. WorkSafe WA for example have completed an audit of accredited assessors and continue to take action where individuals are found not to be properly discharging their duties. The most notable example being the recent prosecution of a high risk work assessor who issued a notice of satisfactory assessment without assessing the person's competency in accordance with the approved assessment instrument for work of that class.⁸

While these actions demonstrate significant improvement, CME considers a formal arrangement between the relevant regulators should be negotiated to ensure information sharing and coordinated oversight of all high risk work training and assessment processes and activities.

To ensure industry can continue to have confidence in the high risk work training and assessment system it is critical WorkSafe WA work effectively with the relevant regulators (e.g. TAC and ASQA), to ensure regulatory oversight of high risk work training and assessment. An agreement should be established between these regulators to enable collaboration and information sharing to ensure compliance issues can be proactively identified and addressed.

⁷ Training Accreditation Council, Strategic Industry Audit into High Risk Work Licenses in Western Australia, 2016 <http://www.tac.wa.gov.au/SiteCollectionDocuments/Report%20-%202015%20Strategic%20Industry%20Report%20-%20High%20Risk%20WL.pdf>

⁸ Department of Mines, Industry Regulation and Safety, WorkSafe WA, Prosecution Details Kenneth William Sully, 2017 <http://prosecutions.commerce.wa.gov.au/prosecutions/view/1466>

Conclusion

CME acknowledges the important role WorkSafe WA plays in regulating compliance safety and health legislation across a diverse range of industries and strongly supports the maintenance of WorkSafe WA as an independent regulator with a well-resourced inspectorate separate to the Resource Safety Division and resources inspectorates.

CME looks forward to continuing to work with WorkSafe WA including through representation on COSH to promote continuous improvement in safety and health outcomes for all employees.

CME encourages the Committee for Public Administration to consider the recommendations made in this submission.

Should you have any questions regarding the issues raised in this submission, please contact Elysha Millard, Policy Adviser People and Communities on 08 9220 8515 or e.millard@cmewa.com

Yours sincerely

A handwritten signature in black ink that reads "Nicole Roocke". The signature is written in a cursive, flowing style.

Nicole Roocke
Deputy Chief Executive