



## COMMUNIQUE

**13 December 2023**

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The Mining and Petroleum Advisory Committee met on 13 December 2023. Discussion focused on issues around the definition of construction work and codes of practice.

The Department of Energy Mines Industry Regulation and Safety also provided a series of presentations on key issues for information and consideration by members.

### **Definition of Construction Work**

Members sought to progress discussion around the definition of construction work under the Work Health and Safety (Mines) Regulations 2022 and whether the definition is fit-for-purpose for the mining and exploration sectors.

Industry members noted a lack of clarity around the definition of construction work in the mining industry which has created confusion around the threshold of minor work to trigger construction work and what work is excluded, leaving the PCBU to when it applies.

DEMIRS provided background to the definition of construction:

- Definition of construction work in the national model WHS regulations was based on an existing national definition and modified by negotiation to produce a consistent definition across all harmonised jurisdictions with the definition being not significantly different the repealed Occupational Safety and Health Regulations 1996 (OSH Regulations).
- National model WHS Regulations were designed to include a chapter for mining work – the definition of construction work was intended to apply to mines.
- Large mining states did not support this approach and a separate harmonisation process was conducted under the National Mine Safety Framework (NMSF) resulting in the Work Health and Safety (Mines) Regulations 2022 being drafted partly based on the NMSF.
- WHS (General) Regulations applicable to mine workplaces were duplicated in the WHS (Mines) Regulations, including the regulations applicable to construction work.
- Prior to commencement of the WHS Act, defined areas of mines could be placed under the administration of the *Occupational Safety and Health Act 1984* by an instrument of declaration. The OSH Regulations definition of construction work would then apply to those declared areas.



Members identified that Mine Safety Management Systems (MSMS) and construction health and safety management systems are operating concurrently in the mining industry. This has presented some uncertainty as to which system is being used.

Industry members highlighted the mining industry has established processes to induct and train workers and the higher standards applied had created a two-tiered safety system.

Industry members noted that National guidance is generic and did not consider Western Australia's exploration and mining sectors.

DEMIRS reinforced that the model work health and safety (WHS) legislation supported the seamless portability of skills across sites and jurisdictions, as well as providing better work health and safety outcomes.

While changes to the WHS legislation and regulations to address the application of the definition were discussed, DEMIRS advised non-legislative and regulatory options should be considered where possible. Any change to the definition would diverge from the harmonised WHS model and create inconsistencies. A guidance note was a non-regulatory option discussed which could accompany legislation and codes of practice. However, it was noted that such an approach would not be enforceable.

It is not the preferred approach to create two different sets of standards applicable to construction work for inside and outside a mine site. A consideration is to apply specific standards from the mining sector to general construction that includes MSMS's and associated risk factors to create a consistent approach to the Safe Work Method Statement.

Members agreed to further investigate the extent of the issue, identify how application of the definition is impacting its member's activities and to provide demonstrated examples of difficulties experienced where protective instruments are triggered.

### **Plant design and registration – class exemption**

The *Work Health and Safety Act 2020* (WHS Act) requires that a person must not use plant (s.42(1)) to direct or allow a worker to use plant (s.42(2)) at a workplace in the plant is not authorised in accordance with the regulations. An item of plant must also be registered to ensure that plant is inspected by a competent person and is safe to operate.

Members noted the class exemption from the regulation requirement not to use items of plant for 30 days post application for registration and inspection by a competent person was granted on 23 October 2023.



## **Mines Safety and Inspection Levy**

Members discussed a proposal to trial an annual agenda item on the Mines Safety and Inspection Levy.

Members supported the transparent disclosure of levy information.

## **Work Health and Safety Commission – Annual Report**

Members noted the Work Health and Safety Commission Annual Report was tabled in Parliament on 9 November 2023.

The Annual Report includes the MAPAC report that highlights key objectives and achievements and other matters considered during 2022-23. These included feedback on all 24 recommendations of the Enough is Enough Report, responding direction from the Minister for Industrial Relations to develop a code of practice for accommodation matters, and review of the Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors: Code of practice.

## **Respect in Mining**

Respect in Mining is an initiative of the Mental Awareness, Respect and Safety program that seeks to build workers' relationships characterised by non-violence, equality, mutual respect, and trust.

Launched in August 2023, Respect in Mining forms part of a comprehensive strategy to eliminate unacceptable behaviour in the mining and resources sector, alongside the SPEAK UP, REPORT IT campaign and WorkSafe's 24/7 hotline and is designed to support small and medium mining organisations to increase awareness and knowledge of the gendered drivers of violence.

The tools and resources for Respect in Mining have been released on the WorkSafe website to be used and shared. Positive feedback has been received.



## **Addressing psychosocial hazards and risk factors at Western Australian mining operations**

The *Addressing psychosocial hazards and risk factors at Western Australian mining operations* report was tabled. The report showcases WorkSafe Mines Safety actions over the past two decades to address psychosocial hazards in the mining industry. The WorkSafe report highlighted activities undertaken by WorkSafe Mines Safety including the work of the mental health and wellbeing team (workplace audits, psychosocial hazard identifications) and current suicide, sexual assault, and harassment data.

The report was prepared in response to PwC's *Regulatory Capability Review of WorkSafe Mines Safety*. This was at the request of the Minister for Industrial Relations as it was thought the PwC findings did not fully acknowledge the work of WorkSafe Mines Safety (DEMIRS) around psychosocial hazards.

It is anticipated the report will be released early in 2024 and positioned as a resource to navigate psychosocial hazards and risk factors in the Western Australian mining industry.

## **Rationalisation of Psychosocial Codes of Practice**

Members considered a proposal to rationalise Western Australia's three 'psychosocial' codes of practice into one code based on SafeWork Australia's model *Code of Practice: Psychosocial hazards at work* ('model Psychosocial Code'). The three 'psychosocial' codes of practice are:

- *Psychosocial hazards in the workplace*
- *Violence and aggression at work*
- *Workplace behaviour*

WorkSafe proposed the feasibility of consolidating the 'FIFO Code' and proposed 'Accommodation Code', along with the proposed adoption and adaption of SafeWork Australia's soon-to-be-published model *Code of Practice: Sexual and gender-based harassment* ('model Sexual Harassment Code').

Members were also informed of the Work Health and Safety Commission's (WHSC) recommendation to retain the three Western Australian codes, expressing concerns the three psychosocial codes were only released last year as a result of a huge amount of work and negotiation.

Given the WHSC's consideration of the rationalisation of the psychosocial codes, Members sought to pause current actions and to revisit in 12 months when more material will be available.



## **Health and Safety Representatives Training – Annual Report**

The Health and Safety Representatives Training Annual Report was released, and it was noted there was a significant increase in the number of Mining and Petroleum health and safety representatives trained in 2022-23.

The increase is likely to be due to the introduction of the WHS Act and companies keen to get representatives trained.

## **Suicides in the WA mining industry**

The Inspector of Mines, Mental Health and Wellbeing presented research into suicide in mining, providing information on suicide definitions, reporting of suicide, and suicide attempts being 20 - 30 per cent less than what occurs and when a suicide attempt is considered a Notifiable Offence under the WHS Act.

Members were stepped through what DEMIRS (WorkSafe) is looking for in relation to work-related risks including, design of work, work environment (including accommodation), plant or equipment and interactions and behaviours.

The Review of Controls used to mitigate those risks were discussed, including the Emergency Response Team, assessing preventative measures in place, evaluating effectiveness of prevention methods and examining how many people are using these prevention methods.

A WA Suicide Mitigation Guidance Sheet has been produced to accompany the legislation.

## **Ammonium Nitrate Emulsion Tanker Trailer Explosion**

Members were provided with a presentation on the ammonium nitrate emulsion (ANE) tanker trailer explosion that occurred in October 2022. The incident involved a double road train carrying ANE suffering a tyre fire in the wheel assembly en-route to Gruyere mine site near Leonora that was not able to be extinguished. The driver disconnected the rear tanker and drove the rest of road train to a safe distance. ANE spilled from the tanker and detonated two hours later leaving a one-metre deep crater in the road and throwing thousands of pieces of shrapnel across the surrounding area.

This was the world's first detonation involving ANE during transport since bulk transport of ANE was introduced in the 1980s.

Members were presented with details of the subsequent investigation conducted by DEMIRS into the incident, and implementation of recommendations to improve the safe transport of ANE and similar products.



It was noted the investigation report, released in September 2023, set out 16 recommendations for industry and others involved in the transportation of dangerous goods.

DEMIRS is seeking to introduce legislative amendments in March/April 2024, with a transition period and to develop a new Code of Practice to ensure the risk of future incidents is minimised.

### **Legislation Update**

MAPAC noted the recent Petroleum Legislation Amendment Bill (2) 2023, and the consequential amendments that will be required.

MAPAC Endorsed the update to the Work Health and Safety (Mines) Regulations 2022, regulation 306A (1) to AS3850.1:2015, AS3850.2:2015 and AS3850.3:2015 Prefabricated concrete elements.

### **NEXT MEETING**

The next meeting of MAPAC is 14 February 2024.