

21 September 2018

Director
Occupational Hygiene Section
Safe Work Australia
GPO Box 641
CANBERRA ACT 2601

Email: WES@swa.gov.au

Dear Sir/Madam ,

CONSULTATION REGULATION IMPACT STATEMENT – WORKPLACE EXPOSURE STANDARDS FRAMEWORK UNDER THE MODEL WORK HEALTH AND SAFETY LAWS

The Chamber of Minerals and Energy of Western Australia (CME) appreciates the opportunity to provide comment on Safe Work Australia's (SWA) *Consultation Regulation Impact Statement – Workplace exposure standards framework under the model work health and safety laws (Consultation RIS)*.

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 2016-17, the value of WA's mineral and petroleum industry was \$105 billion. Iron ore is currently the State's most valuable commodity, and saw an increase in iron ore sales by almost 31 per cent on the previous financial year to value almost \$64 billion. Petroleum products (including LNG, crude oil and condensate) followed at \$19 billion, with gold third at \$11 billion, both commodities saw an increase in sales of 5 per cent and 7 per cent respectively from the previous financial year.

The resources sector is a major contributor to the state and the Australian economy. The estimated value of royalties to the state of WA received from the resources sector composed of \$5.78 billion which accounted for around 19 per cent of the state government's revenue in 2016-17.

The WA resources sector places the highest priority on ensuring the safety and health of the workforce. The sector is committed to continuous improvement in all areas of health and safety and follows a best practice risk based approach to managing exposure to hazardous chemicals in the workplace.

Summary of recommendations

A summary of recommendations and CME positions relating to the Consultation RIS is included below with further supporting detail outlined in the following submission.

- CME continues to actively engage in the harmonisation process and although not implemented in WA, the model WHS laws are of direct relevance to the WA resource sector. CME supports the principle of harmonisation, provided WHS laws provide for flexibility for state and industry based approaches to support the WA resource sectors risk based approach to managing WHS.
- The WA resource sector takes a risk based, best practice approach to managing the risks associated with exposure to airborne hazardous chemicals and ensure exposures remain

as low as reasonably practicable. In this regard, WES play a role in assisting industry to assess exposure and review the effectiveness of controls.

- CME is supportive of streamlining the methodology for reviewing and updating WES to ensure the list remains current and relevant to workplaces, while maintaining quality review processes.
- To improve the review process, CME recommends consideration of industry data form part of the review process and methodology timelines be updated to clarify SWA's review approach when no primary or secondary data sources are available.
- CME recommends SWA extend the stakeholder consultation period to three months to ensure industry have appropriate time to respond.
- While industry's focus is on managing occupation exposure risks to as low as reasonably practical levels, CME is broadly supportive of retaining mandatory exposure standards to guide and assist industry's best practice management of these hazards.
- The approach to implementation of any changes to WES values is critical. CME stresses the importance of a regulatory approach that facilitates continuous improvement efforts to ensure workplace exposure to airborne hazardous chemicals is as low as reasonably practicable, consistent with the current approach of the WA resources sector.

Harmonisation

Although WA has not implemented the model work health and safety (WHS) laws in their current form, CME remains an active participant in the harmonisation process.

Currently in WA, mines safety and health legislation, *The Mines Safety and Inspection Act 1994 (WA)*, is separated from but aligned to the general WHS legislation, *The Occupational Safety and Health Act 1984 (WA)*.

In July 2017, the state Government confirmed reform of safety and health legislation in WA would be progressed in line with the national model WHS laws. Under the approach general and resources WHS legislation will be consolidated within a single Act. The single Act will be supported by regulations including sector specific regulations for the mining and oil and gas industries. Therefore, while WA is not currently operating under the model laws, they are clearly of direct relevance to the WA resources sector.

CME has consistently supported the reform of WHS legislation in WA to move away from prescription and towards best practice risk based and outcome focused approaches.

In regards to harmonisation, CME sees particular benefit in harmonisation at the level of the WHS Act, provided there is flexibility for state and sector based approaches through Regulation and Codes of Practice.

CME continues to actively engage in the harmonisation process and although not implemented in WA, the model WHS laws are of direct relevance to the WA resource sector. CME supports the principle of harmonisation, provided WHS laws provide for flexibility for state and industry based approaches to support the WA resource sectors risk based approach to managing WHS.

Workplace Exposure Standards in Western Australia

Workplace exposure standards (WES) are airborne concentrations of a particular chemical or substance in the workers' breathing zone that should not cause adverse health effects or undue discomfort to nearly all workers. Under model WHS law, WES's are legal concentration limits that must be adhered to. A person conducting a business or undertaking (PCBU) must ensure a worker is not exposed to airborne contaminants above the workplace exposure standard.

Although WA has not yet adopted model WHS legislation, mandatory WES currently exist in line with the *Mines Safety and Inspection Act 1994 (WA)* and supporting regulations which require employers to establish and maintain a system for the surveillance of the health of their employees.

Currently the relevant workplace exposure standards are those referenced in the workplace exposure standard document, *National Exposure Standards* [NOHSC: 1003(1995)].

As with all health and safety hazards, industry take a risk based approach to the management of occupational health hazards. The industry uses exposure standards to assess exposure and to review the effectiveness of controls. Their focus is on ensuring the risks associated with exposure are minimised as far as reasonably practicable.

Generally the industry adopts regulatory exposure standards. However, for many contaminants, a number of resource sector organisations set and require compliance to internal exposure standards which offer a higher level of protection than required by the standard. This approach aims to achieve the highest possible level of protection.

Where exposure standards are not prescribed in WA legislation, national and international exposure standards and guidance material are important resources that form part of the risk assessment and hazard management process. Industry's approach to diesel particulate matter is a good example of industry reacting appropriately when a new hazard arises.

The WA resource industry already invests a significant amount in continuing to strive toward best practice management of risks posed by chemical exposure in the workplace. The systems and technologies in place to measure, monitor and control exposures are designed to both comply with relevant standards and to ensure as far as reasonably practicable the health and safety of employees. In most cases this will go well above any established minimum standards.

The WA resource sector takes a risk based, best practice approach to managing the risks associated with exposure to airborne hazardous chemicals and ensure exposures remain as low as reasonably practicable. In this regard, WES play a role in assisting industry to assess exposure and review the effectiveness of controls.

The model workplace exposure standard framework

Given the role of WES in managing occupational exposure to hazardous contaminants, exposure standards should be based on the most accurate toxicological and epidemiological evidence. In this regard, CME acknowledges the following issues noted in the Consultation RIS with the current WES framework:

- The current review process does not enable WES to be effectively added or removed from the WES list.
- The current process for reviewing and determining a WES value is not standardised, resulting in ad hoc reviews that can take up to 10 years per exposure standard.

These issues have resulted in a list of exposure standards that is not entirely reflective of current scientific information or technology, impacting their ability to meaningfully guide and assist industry in implementing best practice approaches.

In 2015, CME contributed to a joint submission to the SWA discussion paper *The role of chemical exposure standards in work health and safety laws discussion paper*. Given issues with the framework and the importance of supporting best practice approaches to managing occupational exposure to hazardous agents, the submission outlined industry's preference for primarily advisory exposure standards supported by guidance material. This approach would allow industry to continue to adopt best practice approaches based on the most current information.

The Consultation RIS proposes three options to address identified issues with the current approach. In summary:

- **Option 1:** Maintain the status quo and continue to update the workplace exposure standards individually on an ad hoc basis.
- **Option 2:** Maintain mandatory workplace exposure standards and implement a streamlined methodology to review and update the workplace exposure standards.

- **Option 3:** Make the workplace exposure standards advisory and implement a streamlined methodology to review and update the workplace exposure standards.

Given the known issues with the current framework, CME members are supportive of the proposed implementation of a streamlined methodology for reviewing and updating workplace exposure standards, noted in Options 2 and 3. The collection and analysis of data from multiple trusted key sources, while retaining the current checks and balances, will help ensure WES list remains up-to-date and relevant to workplaces. This process will also ensure outlier values are not adopted.

CME is supportive of streamlining the methodology for reviewing and updating WES to ensure the list remains current and relevant to workplaces, while maintaining quality review processes.

While it is important the review process consider technological advancements and ongoing research, it is equally important to consider practical and pragmatic approaches regarding potential health impacts and effective means of controls for these risks. Industry is well placed to contribute to the review process in this regard. Companies have a wealth of data for example from their hygiene monitoring programs that could be collectively analysed as part of the review process. This analysis would provide valuable data on exposures in the work environment and help assist in consideration of new exposure standards.

Further, CME notes the streamlined methodology outlined in the consultation RIS does not acknowledge there may be situations where there are no primary or secondary data sources to base an evaluation of potential WES values. This would require the commissioning of a toxicological report. It is unclear whether SWA is proposing to obtain this under the proposed timeframes or whether this would lengthen the review process. It is imperative the quality of reviews are not compromised under the streamlined methodology and CME considers instances such as this would likely warrant extended timeframes to obtain the required scientific information.

To improve the review process, CME recommends consideration of industry data form part of the review process and methodology timelines be updated to clarify SWA's review approach when no primary or secondary data sources are available.

Once a new or updated WES value is proposed, industry's feedback plays a key role in the consultation process. CME considers the proposed one month timeframe for stakeholder consultation on the proposed WES value would be insufficient to obtain meaningful feedback from industry. Companies have complex internal processes for obtaining feedback from subject matter experts internally and subsequently responding to public consultation processes themselves or through industry bodies. One month would be inadequate to achieve this.

CME recommends SWA extend the stakeholder consultation period to three months to ensure industry have appropriate time to respond.

As noted above, industry considers mandatory exposure standards that are out of date and not based on the best available information do nothing to assist industry in managing the risks of exposure to hazardous contaminants.

Given the proposal to streamline methodology for reviewing and updating the WES list will help ensure values are current and based on the latest scientific information, CME members are broadly supportive of maintaining mandatory exposure standards.

It is important to note that although WES are good guidance, industry consider the focus should remain on reducing workplace exposure to as low as reasonably practicable.

While industry's focus is on managing occupation exposure risks to as low as reasonably practical levels, CME is broadly supportive of retaining mandatory exposure standards to guide and assist industry's best practice management of these hazards.

Implementation

While providing in principle support for the maintenance of mandatory exposure standards and a move to a streamlined framework for reviewing and updating WES, CME considers the approach to implementation of any changes to WES values will be extremely important.

The role of the regulator is particularly critical to continue to facilitate continuous improvements within industry and not seek to drive a compliance based culture through enforcement.

A regulatory approach that breeds cultures overly focused on simply complying with WES do not facilitate the best WHS outcomes. Exposure standards should not be interpreted as a limit under which the exposure is considered 'safe' and over which it is considered 'unsafe'. As discussed above, the resources sectors takes a risk based approach to managing the risks associated with occupational exposure to ensure levels remain as low as reasonably practicable. A regulatory approach that seeks to simply focus on compliance would detract from these efforts.

Regulators should appropriately balance a focus on compliance with support and education to assist in raising health and safety standards by promoting proactive continuous improvement efforts informed by the best available information regarding recommended exposure standards and effective controls.

To ensure any changes to WES result in improved WHS outcomes, changes should be supported by additional engagement with industry to raise awareness and educate businesses on managing exposures. Regular updates will be key to ensure regulatory expectations and the latest information is clearly communicated to industry.

The approach to implementation of any changes to WES values is critical. CME stresses the importance of a regulatory approach that facilitates continuous improvement efforts to ensure workplace exposure to airborne hazardous chemicals is as low as reasonably practicable, consistent with the current approach of the WA resources sector.

Conclusion

The WA resources sector acknowledges the important role workplace exposure standards play in managing the risks associated with exposure to hazardous chemicals.

CME is supportive of streamlining the process for reviewing and updating workplace exposure standards to ensure they reflect the most relevant available information. CME is broadly supportive of maintaining mandatory exposure standards provided the focus remains on ensuring risks are managed to as low as reasonably practicable levels.

CME looks forward to ongoing engagement with SWA on this important topic and is appreciative of the consultative nature of the process to date.

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

Yours sincerely



Paul Everingham
Chief Executive