



## Chamber of Minerals and Energy of WA

### Submission

## National Review of Occupational Safety and Health Laws

July 2008

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## Part A - CME Position on Key Issues

### Introduction

1. The Chamber of Minerals and Energy of Western Australia (CME) welcomes the opportunity to make a submission to the Review Panel concerning the development of national model occupational health and safety (OHS) laws. CME is the peak resources sector representative body in Western Australia with its members covering approximately 85% of all mineral and energy employees in Western Australia.
2. CME's vision for occupational safety and health is for a sustainable resources industry that has a passion for the protection of people. CME co-ordinates collaborative efforts to improve safety and health within the mining industry through an extensive network of safety and health professionals within resource sector. CME plays an active role in the development of general and mining OHS policy in Western Australia through its membership of the State's Commission for Occupational Safety and Health and its Mining Industry Advisory Committee. CME also participates directly in the development of the National Mine Safety Framework (NSMF) under the auspices of the Federal Government. CME is also a member of the Minerals Council of Australia.
3. The CME's submission is in two parts: Part A seeks to clearly indicate the CME's position on the key issues and to provide further information on particular matters of relevance or interest to the WA mining industry. Part B provides a summary of CME's position on each of the questions in the Issues Paper.
4. In relation to mining safety laws CME has been an active participant in the National Mine Safety Framework (NMSF) harmonisation initiative since its commencement in 2005. CME strongly supports the continuation of the NMSF program regardless of the outcome of the National Review.

### Legislative Approach

5. A primary issue for CME is the status of industry specific OHS legislation under the emerging national model regime. The National Review coincides with a review of the *WA Mines Safety and Inspection Act 1994* being undertaken by Commissioner Stephen Kenner of the Western Australian Industrial Relations Commission. In recent submissions to the Kenner review CME has advocated continued separation of mining and general OHS statutes to ensure the focus on safety and health in the resource sector and facilitate movement toward national harmonisation of mining safety legislation.
6. CME continues to support this view but acknowledges that the present level of duplication between mining safety and general OSH laws in some states, including WA, is inconsistent with the imperative to achieve national harmonisation of OHS laws. As a result, subject to the maintenance of a separate regulatory structure and specialist inspectorate dealing with the specific hazards and processes of the mining industry, CME supports the harmonisation of general OHS laws across all Australian jurisdictions and industries through the present National Review.

7. CME supports a national OHS model providing for one principal OHS Act consistently implemented in all jurisdictions and applying to all industries - including mining. This support is subject to the model OHS Act and its manner of implementation:
  - being limited to establishing an overall OHS framework;
  - facilitating continuation of industry specific OHS legislation that is consistent with the model Act; and
  - ensuring maintenance of specialist mining safety regulators within each jurisdiction.
8. While CME supports national harmonisation of OHS laws in principle, it is absolutely opposed to the national model OHS Act providing for:
  - strict liability duties of care;
  - right of entry entitlements for unions or other parties; and
  - unions or other third parties to have any role in the commencement of OHS prosecutions or other enforcement actions.
9. Harmonisation should be achieved through the implementation of template legislation in each state and territory with jurisdictions retaining primary regulatory responsibility for OHS so as to ensure prevention and compliance resources can be allocated on the basis of local priorities.
10. CME advocates a national OHS model that is based on the three tier approach currently used in all Australian jurisdictions. This model consists of a high level primary Act which establishes an overall framework for the management of OHS within workplaces supported by regulations and codes of practice. [Q1] The model OHS Act should not preclude industry specific OHS legislation or regulation that is consistent with the general requirements.
11. The framework Act should contain heads of power to support:
  - regulations that are predominantly performance based with a minimum of prescription; and
  - codes of practice containing information on methods to comply with general duties or process requirements in relation to specific hazards.
12. While referring specifically to mining operations, CME considers the regulatory regime envisaged in the NMSF Legislation Framework is relevant to the approach to be taken in the national model OHS Act,

Legislation and standards covering mining operations shall encourage continuous improvement in OHS outcomes. They shall consist of a range of approaches, incorporating a mix of principles, performance and process-based standards and prescription. Such a mix shall strike a balance between a proactive and systematic approach to safety management, the identification of outcomes to be achieved and, where necessary, the specification of prescriptive measures.

13. While harmonisation of statutory duties and other elements of the OHS framework will be a major achievement, much of the 'practical' inconsistencies in OHS arise at the level of regulations. In the mining industry the NMSF is attempting to deal with this through harmonisation of key elements of mining safety regulation. If jurisdictions are able to move all "local" OHS issues to regulations and/or codes of practice and use these to introduce or maintain nationally inconsistent requirements, the overall benefit of harmonisation will be reduced. CME considers the objective of the harmonisation initiative should be consistency not just in legal structures but also of regulatory practice.
14. The model Act should only deal with "framework" issues and be limited to duties of care, consultation, resolution of issues, compliance and enforcement. The model Act should contain a minimum of prescription and provide for flexibility in achieving required outcomes (e.g. workplace consultation processes). [Q2]

#### *Development of Model Act*

15. CME favours use of the similarly drafted WA and Victorian OHS legislation as the basis for the model OHS Act (which should be called the Occupational Health and Safety Act [Q3]). Within their jurisdictions these statutes have proven to be stable platforms for significant improvement in safety and health outcomes. The approach taken in these statutes has been implemented in the WA mining industry through the *Mines Safety and Inspection Act*.
16. The WA and Victorian OHS legislation include all elements required for an OHS framework and have enjoyed support from stakeholders over a considerable period. This is not to say that there are no improvements that could be effected as part of the National Review, however, there seems little point in expending time and energy in drafting the model Act from "scratch". An effective approach could be for the Review Panel to start with (say) the Victorian legislation and identify any changes required to enable it to be adopted nationally. This approach is preferable to "cherry picking" or "cut and paste" processes which may lead to inconsistent laws that are not as effective as the well established body of law in a specific jurisdiction.
17. The Victorian and WA statutes contain clear statements of objectives that are more than adequate for application nationally. These are consistent with the approach contained in the NMSF legislation framework which calls for the objectives of the legislation to be:
  - securing the health and safety of all persons engaged in work;
  - continuous improvement in safety and health performance;
  - effective implementation of safety and health management systems;
  - focus on prevention rather than retribution;
  - identification and control of hazards; and
  - effective consultation. [Q4]

18. CME is not convinced that a statement of both objectives and principles is required in the model OHS Act as the objectives appear to provide clear indication to duty holders and the courts as to the intent of the legislation. [Q5]

## Scope, Application and Definitions

### *Industry Sectors*

19. CME supports a national OHS model which provides for one principal OHS Act consistently implemented in all jurisdictions and applying to all industries but also facilitates continuation of industry specific OHS legislation that is consistent with the model Act.

20. There should be no duplication at the 'framework' level but scope for suitably amended industry specific OHS legislation (such as the *WA Mines Safety and Inspection Act*) to be maintained along with relevant subordinate regulations and codes. Industry specific harmonisation initiatives such as the NMSF should be maintained and extended to address subordinate requirements.

21. Mining safety legislation would cover industry specific matters such as:

- incident and hazard notification;
- qualifications of mines inspectors;
- requirements for registered mine managers and other specified positions or functions;
- certification of competency;
- health surveillance;
- mine plans and records; and
- regulation-making head of power.

22. Where industry specific safety legislation establishes duties on persons other than those covered by the principal OHS Act (e.g. mine managers), these should not in any way derogate from the principal duties and should be narrow in scope. The model OHS laws should not affect the ability of the mining industry to establish statutory occupations or functions with attendant duties and qualification requirements. CME supports the intent of clause 11 of the NMSF Legislation Framework call for nationally consistent legislation specifying,

such key positions which are considered necessary for the safe operation of the mine within the mine management structure and the functions, responsibilities and required competencies of persons in those positions.

### *Workplaces and Non-Workplaces*

23. CME considers there is no alternative to concepts such as 'work' and the 'workplace' as the basis for establishing duty holders. Most jurisdictions have an extended definition covering locations and temporary workplaces where work is performed i.e. beyond the traditional, fixed geographic "place". Alternative bases for general duties have the potential to impact negatively on other aspects of the OHS framework including consultative arrangements. [Q10]

24. CME does not support employers having an unqualified duty of care to members of the public. However, there is support for existing duties, such as s.12 of the WA *Mines Safety and Inspection Act*, which provide that an employer or self-employed person at a mine must, so far as is practicable, ensure that the safety or health of a person, not being (in the case of an employer) an employee of the employer, is not adversely affected wholly or in part as a result of work being undertaken or any hazard that arises from the work. [Q11]

#### *Definitions*

25. At a minimum CME considers uniform definitions in the model Act are essential for the following terms: employer, employee, code of practice, control, hazard, plant, (reasonably) practicable, self-employed person, risk, supply, and workplace. [Q14]

26. As noted above the status of the model Act relative to industry or process specific safety legislation should be explicitly covered. [Q15]

#### **Duties of Care**

27. The CME supports the model Act including a 'control' test as part of the factors used to determine 'practicability'. The NMSF Legislative Framework provides (at point 2b) that a national framework shall include, *inter alia*,

clear and specific legislative obligations on those involved in the mining industry including owners, employers, employees, contractors, and includes suppliers of goods or services, manufacturers, designers and importers, with the level of obligation being commensurate with the degree of responsibility or control held. (emphasis added)

28. The use of the concept of control should be related directly to determining the extent of a duty owed rather than as the basis for identifying duty holders generally. The model Act should avoid using the term control in both a narrow sense (i.e. as a factor in determining practicability) and as a means of identifying persons who have certain duties. The potential for use of definitions and appropriate drafting to limit confusion should be explored. Use of concepts such as 'management' or 'command' could be considered as alternatives to 'control' in identifying duty holders. [Q16-17]

#### *Work Relationships*

29. CME supports the continued use of employment relationships as the basis for the primary occupational health and safety duties of care. Any perceived benefits from a move to alternative bases for the primary OHS duties based on concepts such as "control" are unlikely to outweigh dislocation arising from the need to develop new case law. There is the possibility of alternative approaches having the negative consequence of moving OHS accountability downward to managers, supervisors and even employees rather than resting with employers. [Q20, Q22]

30. Jurisdictions have tackled the need to ensure there are no gaps in coverage of people who are engaged to work using contract work or labour hire arrangements outside the traditional employment relationship in different ways. The model laws provide an opportunity to develop a single approach based on the experiences of the various jurisdictions. CME supports the approach taken in WA to establish duties that specifically cover labour hire and similar arrangements. As well as facilitating jurisdictional consistency in the coverage of OHS laws, the model Act should provide a means of ensuring integrity of coverage is maintained. In addition to explicit clauses to deal with contracting, labour hire etc, a head of power for deeming the status of specified working arrangements should be considered. [Q12, Q21]

#### *Duties of Employers*

31. CME supports the duties of care imposed on employers as they are similarly expressed in the WA and Victorian OHS legislation. That is, duties qualified by the concept of practicability, requiring the employer to provide a workplace where employees are not exposed to hazards. See comments at paragraph 41 concerning the CME's absolute opposition to these duties being drafted so as to establish a strict or absolute liability.

#### *Duties of Workers and Others*

32. CME supports the duties of care imposed on employees as they are similarly expressed in the WA and Victorian OHS legislation.

#### *Appointed Persons and Officers*

33. CME does not support a general requirement for the appointment of a single designated person with responsibility for OHS in a workplace. Responsibility for OHS should rest with the employer to appoint competent persons to all management positions. There is a significant risk that identification of an individual other than the employer who is generally 'responsible' for OHS will lead to accountability for OHS shifting downward to managers, supervisors and employees.

34. CME does support statutory requirements for certain occupations, functions and management positions in high risk workplaces such as mining where they are essential to delivering improved health and safety outcomes. These requirements should be contained in industry specific legislation rather than the model Act and should be limited rather than general in scope. [Q27]

35. CME supports the model OHS Act containing duties of care for officers of bodies corporate provided the duties are subject to the qualification of practicability that is applicable to the duties of employers generally. The onus of proof for alleged breaches by officers of bodies corporate must rest with the prosecution. [Q30]

### *Duties of Persons in Control*

36. CME considers the current legislative approach to specifying the duties of persons in control of workplaces to be adequate. As noted above the incorporation of a definition of 'control' will assist in the application of these duties. (See comments at paragraph 28.) [Q31]
37. CME does not support extending the relevant duties to 'work areas' as this will lead to further "downward" pressure on OHS accountabilities to managers, supervisors and employees. [Q32]

### *Activities Which Impact on Health and Safety*

38. CME does not support the model OHS Act incorporating detailed obligations related to activities or processes beyond a head of power to support regulations or other instruments. The model Act should not deal with any specific hazards or activities. [Q33]

### **Reasonably Practicable & Risk Management**

#### *Reasonably Practicable*

39. CME strongly supports the inclusion of a test of "reasonably practicable" or "practicable" in the model OHS Act. Duties qualified in this way make transparent the extent of the duty owed and intent of the law. This is a more effective and efficient way of communicating to duty holders what is required of them and is strongly preferred over the alternative approach of absolute duties matched with specified defences. [Q37]
40. CME supports the inclusion of a definition of "practicable" or "reasonably practicable" in the model Act and considers the similar definitions in the WA and Victorian OHS legislation with the addition of "control" as an element of the test as suitable templates for a national definition. [Q39, Q40]
41. CME is absolutely opposed to construction of employers' duty of care on the basis of strict liability. The present approach in NSW and QLD of absolute duties subject to certain defences is not acceptable to the CME. The reverse onus of proof that this approach entails is inconsistent with common law principles and leaves employers subject to costly and counterproductive legal processes that do little to improve safety. [Q38]
42. There is no evidence to suggest that the strict liability approach to duties of care leads to improved safety and health outcomes. The Comparative Performance Monitoring Report indicates while injury rates in the two jurisdictions with strict liability (NSW and QLD) are higher than the national average, rates are lowest in jurisdictions (WA, VIC) with duties that are qualified by 'practicability'.
43. It is notable that in both the strict liability jurisdictions, employees' duties to ensure the safety of themselves and others are qualified - by reference to 'reasonable' in NSW and 'wilfully' in QLD. [Q38]

### *Risk Management*

44. The model OHS Act should embed risk management principles and concepts as the basis for the management of all OHS issues. Section 20 of the Victorian *Occupational Health and Safety Act 2004* provides a sufficient template for a national provision relating to risk management. Clear and unambiguous definitions of “hazard” and “risk” are essential [Q43, Q44]

### **Consultation, Participation and Representation**

45. Active workforce participation is a fundamental element of effective management of OHS. The mining industry has well developed systems for engagement with its workforce in maintaining and improving OHS outcomes. CME supports clause 17 of the NMSF Legislation Framework as a suitable basis for workplace consultative arrangements for OHS. This framework provides:

Legislation shall provide for consultation processes which acknowledge the right of all employees to be involved in the development of the risk-based safety and health management system, policies and practices. The consultation process shall include mine-site consultation which can involve safety and health committees and mine employees’ safety and health representatives, and shall provide a mechanism for resolution of safety and health disagreements.

46. The approach to workplace consultation, participation and representation for OHS is similar across the Australian jurisdictions. CME argues that generally the present consultative arrangements are sufficiently flexible to enable workplaces to establish mechanisms to facilitate effective workforce participation in OHS.
47. Unions should not have a mandatory role in establishing workplace consultative arrangements. [Q45]
48. As far as possible consultative arrangements should be workplace focussed and provide for all persons in the workplace to be able to participate in OHS related matters. This means that the employer-employee relationship should not be the sole determinant of consultation obligations or entitlements. Contractors and labour hire personnel should be included in the consultative arrangements where they are part of the workforce at a particular workplace. [Q46, Q58]
49. The model Act should contain a minimum of prescription concerning consultative structures so as to leave workplaces with sufficient flexibility to determine the arrangements which are most effective for their particular workplace. If specific processes related to consultation need to be prescribed, these should be implemented through regulations rather than in the model OHS Act. [Q47, Q48, Q57]

### *Participation and Representation*

50. CME supports the continued use of Health and Safety Representatives (HSRs) and Committees (HSCs) as the primary means by which workforce OHS participation is enabled. [Q49, Q50] The model Act should not contain a prescriptive requirement for HSRs to be elected. HSRs are most effective in large, high risk workplaces where communication on OHS matters is pivotal. The present arrangements whereby the employer or employees at a workplace are able to request the election of HSRs should remain - CME supports the use of the relevant provisions of the WA or Victorian OHS legislation as the basis of the model provisions. The processes of electing HSRs should be workplace based and third parties, including unions, should not have any role in the election process. Workplaces should have the flexibility to determine both the extent of coverage of a HSR (e.g. designated work groups) and the process for conducting the election. Only persons who will be represented by the relevant HSR should be entitled to vote. [Q51]
51. There is a high degree of commonality across the jurisdictions in the functions ascribed to HSRs and HSCs in current OHS legislation. With the exception of the ability of HSRs to issue provisional improvement notices (PINS), the CME is not aware of any major issues associated with the functions of HSRs and HSCs. CME supports the functions of HSRs and HSCs outlined in the NMSF Consultation Framework. [Q53, Q54]
52. HSRs should continue to be entitled to receive initial and refresher training relevant to their functions. Training for HSC members should be a workplace issue to be determined the reference to the skills and experience of committee members and the hazards present in the workplace. [Q55]

### *Right of Entry*

53. CME does not support the model OHS Act containing right of entry entitlements for unions or other parties. Right of entry should be limited to inspectors.
54. The model OHS Act should provide robust workplace based mechanisms for participation, consultation and resolution of issues rendering an explicit role for unions or other third parties superfluous. Employees can continue to exercise their right to be represented by their union, which can raise any health and safety issue with the employer or an inspector without any need to enter the workplace.
55. The use of OHS laws for industrial purposes by unions has the potential to significantly undermine workplace consultative arrangements. The WA mining industry has established effective workplace consultation without the involvement of unions. The focus in the model OHS Act should be on establishing effective and genuine workplace consultation.
56. In the event the national OHS Act does contain provision for rights of entry, these should be entirely consistent with any equivalent provisions in national industrial relations legislation. CME endorses the submission of the Australian Mines and Metals Association (AMMA) regarding right of entry issues [Q59-62]

### *Issue Resolution*

57. CME supports the approach to issue resolution contained in the WA and Victorian OHS legislation. This approach encourages workplaces to develop their own issue resolution procedures and as a minimum requires genuine attempts by the parties at the workplace to resolve issues prior to the involvement of the regulator. [Q63, Q64] The model Act should contain a minimum of prescription concerning issue resolution with any detail that is deemed necessary located in regulations. [Q65]

### *Right to Cease Unsafe Work*

58. Since their inception WA's OHS laws have contained an explicit right for individual workers to refuse to work where there are reasonable grounds to believe that to continue to work would expose the worker to a risk of imminent and serious injury or harm to health. A similar provision has existed in the mining safety legislation since 1994.

59. Notwithstanding the potential for the right to cease work to be misused for industrial purposes, CME is not aware of any recent issues with this rarely used entitlement and supports inclusion of a similar entitlement in the model OHS Act. As in the WA legislation, the right to cease unsafe work and associated wage entitlements should be subject to compliance with relevant procedural requirements including an obligation on workers to undertake safe alternative work. There should be penalties for misuse of the right to cease work. [Q67-70]

60. CME is strongly opposed to HSRs having the right to direct that work cease. The ability of suitably trained HSRs to issue Provisional Improvement Notices (PINS) is a sufficient mechanism to enable issues to be resolved where there is no agreement on a risk that is perceived to be significant. The conditions relating to the issuance of PINS in the WA and Victorian legislation provides a suitable template for national provisions. [Q68]

### *Protection From Discrimination and Victimisation*

61. CME supports inclusion in the model OHS Act of a protection from discrimination as a result of the performance of any function or activity provided for in the Act. The relevant provisions of the WA *Occupational Safety and Health Act* provide a suitable template for such a provision. CME does not support a broadly cast provision that relates to any action by a person that could be seen to be related to OHS - any protection provided should relate specifically to the legislation. [Q71] Actions under the model OHS laws relating to unlawful discrimination should only be able to be commenced by the regulator and should be subject to proceedings consistent with other breaches of the legislation. The model OHS Act should not allow for representative actions related to allegations of unlawful dismissal. CME is absolutely opposed to unions or other third parties having any role in the commencement of actions related to allegations of unlawful discrimination. [Q72-78]

## Regulator Functions, Powers and Accountabilities

### *Role and Functions of Regulators*

62. The model OHS Act should contain broad provisions that establish the functions and powers of the OHS regulator. It is a fundamental obligation of governments to establish and adequately resource OHS regulators. CME supports the regulator functions outlined by the MCA in its submission to the Review Panel. [Q79]
63. The model Act should not contain detailed provisions relating to the operations of regulators and, in particular, should not seek to separate enforcement and advisory functions. It is essential the model OHS Act neither limit the capacity for innovation by regulators nor the ability of jurisdictional regulators to make decisions about priorities and resource allocation. [Q83]

### *Inspectors*

64. CME considers it essential the model OHS Act provide OHS inspectors with the clear authority to provide advice and assistance. The limitations on inspectors providing advice that prevail in most jurisdictions do not serve to improve health and safety. While the challenges of balancing an enforcement and advisory role are clear, a legislative basis for inspectors to play a proactive role in improving safety and health outcomes is a high priority for the WA mining industry.
65. CME is of the view that the role of the regulator established in the model OHS Act should include audit and verification of the application of risk management practices and in no way be limited to a focus on compliance against prescriptive requirements. CME supports the regulator responsibilities outlined in the NMSF Legislation Framework:

Legislation shall provide for the establishment of a professional and technically competent mines inspectorate with appropriate experience, skills and qualifications. The inspectorate shall be provided with adequate powers and resources to undertake an independent evaluation of the operator's safety and health management system. This shall include: enforcing the legislation; monitoring safety and health performance; inspecting and auditing mines; providing coaching, mentoring, education and sharing of information including during emergencies; directing remedial actions to be undertaken in the event of unsafe practices; and investigating complaints, fatalities, serious accidents, dangerous occurrences and any other matters relating to the safety and health of mine workers. [Q85]

### **Compliance and Enforcement**

66. In the main, the present graduated compliance instruments of directions, improvement notices, prohibition notices, and prosecutions have proved effective and sufficient tools for regulators. [Q90] CME supports the model OHS Act providing for these instruments being used in the context of transparent compliance and prosecution policies issued by regulators. [Q91]

### *Infringement Notices*

67. CME does not support the introduction of an infringement notice scheme on the basis that it will not lead to any significant improvement in safety and health outcomes. CME's primary concern is that an infringement notice scheme would serve to reinforce the attachment of some regulators to prescriptive modes of intervention as opposed to working to address high priority hazards and risks.
68. By design infringement notices would deal only with minor issues where there happens to be a strict liability standard established in regulations - they are akin to "parking tickets". Small monetary penalties for breaches of minor consequence would seem unlikely to either act as a spur to better practice or constitute a meaningful 'punishment' for the employer.
69. Even if an infringement notice system were to deliver a high degree of compliance with 'minor issues' it is not necessarily the case that low frequency, high impact risks would be adequately addressed. A diversion of regulator and industry resources from high risk to minor issues seems difficult to justify. [Q97]

### *Enforceable Undertakings*

70. CME supports extending the scope of existing enforceable undertakings to include circumstances where the regulator alleges but has not prosecuted a breach of the legislation. Use of this enforcement tool under present WA OHS laws has been limited as enforceable undertakings can only be agreed once the regulator has successfully prosecuted an employer. Enabling companies and the regulator to consider without-prejudice enforceable undertakings before or during formal proceedings would enhance the ability of parties to respond to a *prima facie* breach with measures reflecting the seriousness of the issues at hand, the compliance record of the employer and the costs of alternative actions.
71. This measure would be attractive to employers who may otherwise be subject to prosecution and to regulators who could affect improvements without the need for resource intensive legal proceedings. The relevant provisions of the Victorian *Occupational Health and Safety Act 2004* would seem to provide a suitable template for the model OHS Act in this regard. [Q101-102]

### **Prosecutions**

72. Prosecutions for breaches of OHS laws should only be able to be commenced by the regulator. CME is absolutely opposed to unions or other third parties having any role in the commencement of OHS prosecutions. Similarly, the model OHS Act must not contain provisions for unions or others to receive moieties from penalties applied following OHS prosecutions. There is no evidence that involvement of unions and third parties in this way improves safety and health outcomes. See comments at paragraph 42. [Q111]

73. CME does not support OHS prosecutions being undertaken outside the jurisdiction of the courts. Both civil and criminal offences should be dealt with in courts of general jurisdiction not in separate tribunals (including tribunals sitting as a court or in specialist OHS courts). Specifically, OHS prosecutions should not be within the jurisdiction of state based industrial relations commissions or tribunals. [Q106]

#### *Burden of Proof and Defences*

74. As indicated earlier in this submission, CME is strongly of the view that 'reasonably practicable' is a necessary and sufficient qualification on the duties to be established in the model OHS Act. The onus of proof in establishing this standard must always rest with the prosecution regardless of the type of offence or the person being prosecuted. See comments at paragraph 31. [Q117]

75. CME supports the model OHS Act including an explicit deemed to comply defence to the effect that compliance with a regulation or approved code of practice is deemed to demonstrate compliance with a relevant general duty. [Q116]

76. CME is absolutely opposed to construction of officers' duties on the basis of strict liability. CME strongly supports the present approach in the Western Australian and Victorian OHS legislation in which liability is imposed on a participatory basis rather than an automatic presumption that someone is guilty because the corporation has committed an offence. The burden of proof must rest with the prosecution. [Q124]

#### *Workplace Death and Serious Injury*

77. CME strongly endorses the MCA position that prosecutions alleging culpability for the death or serious injury of a person should be dealt with under manslaughter or similar provisions of the criminal law. Death or serious injury offences should be handled as would any other criminal offence under the Crimes Act. There is no justification in establishing a separate offence such as "industrial manslaughter" or an offence under an issue-specific legal framework like the OHS Act. [Q136-138]

#### **Other Issues**

78. CME endorses the submission of the Minerals Council of Australia to the Review Panel regarding regulation making powers, codes of practice, notification of incidents and reporting, external appeals and issue resolution, tripartite mechanisms, and mutual recognition.

79. CME is strongly supportive of tripartite consultation in OHS policymaking but is opposed to either industry or unions having a direct role in the administration of OHS. The OHS regulator must maintain a high level of independence.

80. The WA Commission for Occupational Safety and Health and its Mining Industry Advisory Committee provide models for ensuring governments have access to high quality advice on OHS issues. While the role of state based consultative bodies is likely to change where laws and regulations are consistent, these bodies would still be able to make a contribution through working with regulators to identify inspection, information and education priorities. [Q148]

81. CME supports the establishment of tripartite industry OHS advisory committees to provide governments and regulators with information and advice on OHS issues that are specific to particular industries. Industry OHS committees should not be mandated in the model OHS Act with any requirements established through regulation. Industry committees should be established for high risk industries only. [Q149]
82. Specific requirements relating to permits and licensing should not be contained in the model OHS Act. The Act should contain a head of power to enable the promulgation of regulations related to licensing and permits. [Q151]



## CHAMBER OF MINERALS AND ENERGY OF WA

### Submission

### National Review of Occupational Safety and Health Laws

JULY 2008

### Part B

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| <b>LEGISLATIVE APPROACH</b> |  |  |
| Q1.                         | Which regulatory approach or approaches should be taken in the model OHS Act, and why? | <p>Subject to the maintenance of a separate regulatory structure and specialist inspectorate dealing with the specific hazards and processes of the mining industry, CME supports the harmonisation of general OHS laws across all Australian jurisdictions and industries through the present National Review.</p> <p>CME advocates a national OHS model that is based on the three tier approach currently used in all Australian jurisdictions. This model consists of a high level primary Act which establishes an overall framework for the management of OHS within workplaces supported by regulations and codes of practice. The model OHS Act should not preclude industry specific OHS legislation or regulation that is consistent with the general OHS requirements.</p> <p>The framework Act should contain heads of power to support:</p> <ul style="list-style-type: none"> <li>▪ regulations that are predominantly performance based with a minimum of prescription; and</li> <li>▪ codes of practice containing detailed information on methods to comply with general duties or process requirements in relation to specific hazards.</li> </ul> <p>While referring specifically to mining operations, CME considers the regulatory regime envisaged in the NMSF Legislation Framework is relevant to the approach to be taken in the national model OHS Act,</p> <p style="padding-left: 40px;">Legislation and standards covering mining operations shall encourage continuous improvement in OHS outcomes. They shall consist of a range of approaches, incorporating a mix of principles, performance and process-based standards and prescription. Such a mix shall strike a balance between a proactive and systematic approach to safety management, the identification of outcomes to be achieved and, where necessary, the specification of prescriptive measures.</p> <p>While harmonisation of statutory duties and other elements of the OHS framework will be a major achievement, much of the ‘practical’ inconsistencies in OHS arise at the level of regulations. In the mining industry the NMSF is attempting to deal with this through harmonisation of key elements of mining safety regulation. If jurisdictions are able to move all “local” OHS issues to the regulations and/or codes of practice and use these to introduce or maintain nationally inconsistent requirements, the overall benefit of harmonisation will be reduced. CME considers the objective of the harmonisation initiative should be consistency not just in legal structures but also of regulatory practice.</p> |

|     | Question  | CME Position  |
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| Q2. | How detailed should the model OHS Act be in comparison with the subordinate regulations and codes of practice?    | The model Act should only deal with “framework” issues and be limited to duties of care, consultation, resolution of issues, compliance and enforcement. The model Act should contain a minimum of prescription and provide for flexibility in achieving required outcomes (e.g. workplace consultation processes).   |
| Q3. | What is an appropriate title for the model OHS Act?   | CME advocates a consistent use of the phrase ‘occupational health and safety’ to refer to the general domain of health and safety in workplaces. Accordingly CME supports <i>Occupational Health and Safety Act</i> as the appropriate title for the model OHS Act.   |
| Q4. | Should the model OHS Act specify its objectives? If so, how and what should they be?                              | The Victorian and WA statutes contain clear statements of objectives that are more than adequate for application nationally. These are consistent with the approach contained in the NMSF legislation framework which calls for the objectives of the legislation to be: <ul style="list-style-type: none"> <li>▪ securing the health and safety of all persons engaged in work;</li> <li>▪ continuous improvement in safety and health performance;</li> <li>▪ effective implementation of safety and health management systems;</li> <li>▪ focus on prevention rather than retribution;</li> <li>▪ identification and control of hazards; and</li> <li>▪ effective consultation.</li> </ul> |
| Q5. | Should the model OHS Act include a set of principles of health and safety protection? If so, what should they be? | CME is not convinced that a statement of both objectives and principles is required as the objectives appear to provide clear indication to duty holders and the courts as to the intent of the legislation.  |
| Q6. | Are there any other issues that should be considered in the legislative approach of a model OHS Act?              | No specific comments.   |

|   | Question   | CME Position   |
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| <b>SCOPE, APPLICATION AND DEFINITIONS</b> |  |  |
| Q7.                                       | Should the model OHS Act maintain the status quo in each jurisdiction regarding industry specific safety legislation? If so, what provisions should be made for establishing the relationship between the model OHS Act and industry specific legislation? | <p>CME supports a national OHS model providing for one principal OHS Act consistently implemented in all jurisdictions and applying to all industries - including mining. This support is subject to the model OHS Act and its manner of implementation:</p> <ul style="list-style-type: none"> <li>▪ being limited to establishing an overall OHS framework;</li> <li>▪ facilitating continuation of industry specific OHS legislation that is consistent with the model Act;</li> <li>▪ ensuring maintenance of specialist mining safety regulators within each jurisdiction.</li> </ul> <p>There should be no duplication at the 'framework' level but scope for suitably amended industry specific OHS legislation (such as the <i>WA Mines Safety and Inspection Act</i>) to be maintained along with relevant subordinate regulations and codes. Industry specific harmonisation initiatives such as the NMSF should be maintained and extended to address subordinate requirements.</p> <p>Mining safety legislation would cover industry specific matters such as:</p> <ul style="list-style-type: none"> <li>▪ incident and hazard notification;</li> <li>▪ qualifications of mines inspectors;</li> <li>▪ requirements for registered mine managers and other specified positions or functions;</li> <li>▪ certification of competency;</li> <li>▪ health surveillance;</li> <li>▪ mine plans and records; and</li> <li>▪ regulation making head of power.</li> </ul> <p>Where industry specific safety legislation establishes duties on persons other than those covered by the principal OHS Act (e.g. mine managers), these should not in any way derogate from the principal duties and should be narrow in scope. The model OHS laws should not affect the ability of the mining industry to establish 'statutory occupations' with attendant duties and qualification requirements. CME supports the intent of clause 11 of the NMSF legislation framework call for nationally consistent legislation specifying,</p> <p style="padding-left: 40px;">such key positions which are considered necessary for the safe operation of the mine within the mine management structure and the functions, responsibilities and required competencies of persons in those positions.</p> |

|      | Question   | CME Position  |
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| Q8.  | Alternatively, should a model OHS Act incorporate all industry specific safety legislation? If so, how and to what extent (e.g., could industry specific issues be dealt with in regulations, codes of practice or guidance material under the model OHS Act)? | See comments at Q7.   |
| Q9.  | Should the model OHS Act contain provisions for improving coordination between safety regulators within jurisdictions? If so, what should be provided?   | <p>While co-operation between regulators is to be encouraged at every level, the structural arrangements for administration of industry specific safety matters should be left to the jurisdictions. There is a case for some industry regulators to be located outside the 'pure' OHS regulatory agency to ensure ready access to technical expertise and industry intelligence. There is a risk statutory requirements for co-ordination will be inflexible and difficult to amend. Co-ordination between regulators is best facilitated through non-statutory measures.</p> <p>CME supports implementation of nationally consistent enforcement policies</p> |
| Q10. | Should general duties of care be tied to the conduct of work, to the workplace or to some other criteria?  | <p>CME considers there is no alternative to concepts such as 'work' and the 'workplace' as the basis for establishing duty holders.</p> <p>Most jurisdictions have an extended definition covering locations and temporary workplaces where work is performed i.e. beyond traditional, fixed geographic "place". Alternative bases for general duties have the potential to impact negatively on other aspects of the OHS framework including consultative arrangements.</p>  |
| Q11. | Should general duties of care under the model OHS Act be extended to members of the public? If so, how?  | CME does not support employers having an unqualified duty of care to members of the public. However, there is support for existing duties, such as s.12 of the WA <i>Mines Safety and Inspection Act</i> , which provide that an employer or self-employed person at a mine must, so far as is practicable, ensure that the safety or health of a person, not being (in the case of an employer) an employee of the employer, is not adversely affected wholly or in part as a result of work being undertaken or any hazard that arises from the work.   |

|   | Question   | CME Position   |
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| Q12.  | Should the scope and application of the model OHS Act be sufficiently broad and flexible to accommodate new and evolving types of work arrangements? If so, how should this be achieved? | Jurisdictions have tackled the need to ensure there are no gaps in coverage of people who are engaged to work using contract work or labour hire arrangements outside the traditional employment relationship in different ways. The model laws provide an opportunity to develop a single approach based on the experiences of the various jurisdictions. CME supports the approach taken in WA to establish duties that specifically cover labour hire and similar arrangements. As well as facilitating jurisdictional consistency in the coverage of OHS laws, the model Act should provide a means of ensuring integrity of coverage is maintained. In addition to explicit clauses to deal with contracting, labour hire etc, a head of power for deeming the status of specified working arrangements should be considered. |
| Q13.  | Are there current or emerging hazards and risks that are not effectively addressed under general duties of care? If so, how should they be provided for under a model OHS Act?           | No specific comments.  |
| Q14.  | Which terms are critical for achieving national consistency? How should they be defined in the model OHS Act?  | At a minimum CME considers uniform definitions in the model Act are essential for the following terms: employer, employee, code of practice, control, hazard, plant, (reasonably) practicable, self-employed person, risk, supply, and workplace.  |
| Q15.  | Are there any other issues relating to the scope, application and definitions of a model OHS Act?  | The status of the model Act relative to industry or process specific safety legislation should be explicitly covered.<br><br>The model OHS Act should not provide any immunity for the Crown .   |
| <b>DUTIES OF CARE - WHO OWES THEM AND TO WHOM</b> |  |  |
| Q16.  | Should the model OHS Act include a 'control' test or definition? If so, why and what should it be?   | The CME supports the model Act including a 'control' test as part of the factors used to determine 'practicability'. The NMSF legislative framework provides (at point 2b) that a national framework shall include, <i>inter alia</i> , clear and specific legislative obligations on those involved in the mining industry including owners, employers, employees, contractors, and includes suppliers of goods or services, manufacturers, designers and importers, <u>with the level of obligation being commensurate with the degree of responsibility or control held.</u> (emphasis added)   |

|      | Question  | CME Position   |
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| Q17. | What should the role of control be in relation to determining who is a duty holder, the nature of the duty, the extent of the duty and the defences?                                  | The use of the concept of control should be related directly to determining the extent of a duty owed rather than as the basis for identifying duty holders generally. The model Act should avoid using the term control in both a narrow sense (i.e. as a factor in determining practicability) and as a means of identifying persons who have certain duties. The potential for use of definitions and appropriate drafting to limit confusion should be explored. Use of concepts such as 'management' or 'command' could be considered as alternatives to 'control' in identifying duty holders. |
| Q18. | Should control be able to be delegated or relinquished? If so, in what circumstances and what should the legal effect of doing so be?   | The model OHS Act should not provide for the delegation of control. CME supports the use of overlapping duties as the most effective means of ensuring coverage of all aspects of OHS at a workplace.  |
| Q19. | Should the model OHS Act clarify responsibilities where multiple duty holders and multiple duties are involved? If so, how should this be achieved?                                   | The duties of multiple duty holders should be clearly defined, based on the concept of reasonable practicability. The Act should articulate the responsibilities of owner, employers, contractors, employers, employees, etc.  |
| Q20. | Is primary reliance on employment relationships a valid basis for framing safety obligations?   | CME supports the continued use of employment relationships as the basis for the primary occupational health and safety duties of care. Any perceived benefits from a move to alternative bases for the primary OHS duties based on concepts such as "control" are unlikely to outweigh dislocation arising from the need to develop new case law. There is the possibility of alternative approaches having the negative consequence of moving OHS accountability downward to managers, supervisors and even employees rather than appropriately resting with employers.                             |
| Q21. | How should the model OHS Act provide for duties owed to non-employees such as contractors, labour hire personnel, volunteers, apprentices/trainees and other persons performing work? | See comments at Q12  |

|      | Question   | CME Position  |
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| Q22. | Is there a broader concept that more effectively covers the various work arrangements?   | No. See comments at Q20   |
| Q23. | How and to what extent should the model OHS Act specify an employer's duty of care?  | CME supports the duties of care imposed on employers as they are similarly expressed in the WA and Victorian OHS legislation. That is, duties qualified by the concept of practicability, requiring the employer to provide a workplace where employees are not exposed to hazards. CME is opposed these duties being drafted so as to establish a strict or absolute liability.  |
| Q24. | To whom should these duties be owed?   | See comments at Q23.  |
| Q25. | How, and to what extent, should the model OHS Act specify worker's duties of care?   | CME supports the duties of care imposed on employees as they are similarly expressed in the WA and Victorian OHS legislation.   |
| Q26. | Should the model OHS Act include duties of care for persons who are not performing work (e.g. visitors to a workplace, members of the public)? If so, what should the duties be? | All persons at a work must have a duty to comply with directions issued by an employer relating to safety and health.   |
| Q27. | Should the model OHS Act provide a mechanism for persons to be appointed to a position that has specific OHS responsibilities?   | <p>CME does not support a general requirement for the appointment of a single designated person with responsibility for OHS in a workplace. Responsibility for OHS should rest with the employer to appoint competent persons to all management positions. There is a significant risk that identification of an individual other than the employer who is generally 'responsible' for OHS will lead to accountability for OHS shifting downward to managers, supervisors and employees.</p> <p>CME does support statutory requirements for certain occupations, functions and management positions in high risk workplaces such as mining. These requirements should be contained in industry specific legislation rather than the model Act and should be limited rather than general in scope.</p> |

|      | Question   | CME Position   |
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| Q28. | What should the liabilities of such appointed persons be if the responsibilities are not met?  | See comments at Q27.   |
| Q29. | What should the relationship be between the OHS responsibilities of the duty holder and such appointed persons?  | See comments at Q27.   |
| Q30. | Should the model OHS Act include positive duties for officers of bodies corporate?   | CME supports the model OHS Act containing duties of care for officers of bodies corporate provided the duties are subject to the qualification of practicability that is applicable to the duties of employers generally. The onus of proof for alleged breaches by officers of bodies corporate must rest with the prosecution. |
| Q31. | Do current provisions for persons in control of a workplace (and plant and substances) clearly express who owes a duty, to whom, and under what circumstances the duty is owed? If not, how could this be clarified? | CME considers the current legislative approach to specifying the duties of persons in control of workplaces to be adequate. As noted above the incorporation of a definition of 'control' will assist in the application of these duties.  |
| Q32. | Should the model OHS Act specify that persons in control of a work area or a temporary workplace also have a duty? If so, to whom?   | CME does not support extending the relevant duties to 'work areas' as this will lead to further "downward" pressure on OHS accountabilities to managers, supervisors and employees.  |

|      | Question  | CME Position  |
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| Q33. | Should the model OHS Act clearly establish health and safety obligations for various activities which affect health and safety for the whole life of an item, structure or system (i.e., conception to disposal)? If so, what should the duties be in relation to these activities?                                   | CME does not support the model OHS Act incorporating detailed obligations related to activities or processes beyond a head of power to support regulations or other instruments. The model Act should not deal with any specific hazards or activities. |
| Q34. | How should the model OHS Act deal with situations where the relevant upstream activity occurs in another jurisdiction or outside Australia, for example, where design occurs in one jurisdiction and manufacture in another? Should the manufacturer be responsible for the failings of a designer in this situation? | No specific comments.   |
| Q35. | How should the activity of supply be defined? Should it occur only once or every time an item changes hands, whether permanently (wholesale, retail, second hand, and gratis) or temporarily (loan or hire)?  | No specific comments.   |
| Q36. | Are there any other issues in relation to the duties of care that should be addressed in the model OHS Act?   | No specific comments.   |

|   | Question   | CME Position  |
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| <b>“REASONABLY PRACTICABLE” AND RISK MANAGEMENT</b> |  |   |
| Q37.  | Should a test of “reasonably practicable” be included in the model OHS Act?  | CME strongly supports the inclusion of a test of “reasonably practicable” or “practicable” in the model OHS Act. Duties qualified in this way make transparent the extent of the duty owed and intent of the law. This is a more effective and efficient way of communicating to duty holders what is required of them and is strongly preferred over the alternative approach of absolute duties matched with specified defences.  |
| Q38.  | If not, what alternative standard should be included?                        | <p>CME is <u>absolutely</u> opposed to construction of employers’ duty of care on the basis of strict liability. The present approach in NSW and QLD of absolute duties subject to certain defences is not acceptable to the CME. The reverse onus of proof that this approach entails is inconsistent with common law principles and leaves employers subject to costly and counterproductive legal processes that do little to improve safety.</p> <p>There is no evidence to suggest that the strict liability approach to duties of care leads to improved safety and health outcomes. The Comparative Performance Monitoring Report indicates while injury rates in the two jurisdictions with strict liability (NSW and QLD) are higher than the national average, rates are lowest in jurisdictions (WA, VIC) with duties that are qualified by ‘practicability’.</p> <p>It is notable that in both the strict liability jurisdictions, employees’ duties to ensure the safety of themselves and others are qualified - by reference to ‘reasonable’ in NSW and ‘wilfully’ in QLD.</p> |
| Q39.  | How should the standard be defined? What level of detail should be provided? | CME supports the inclusion of a definition of “reasonably practicable” or “practicable” in the model Act and considers the similar definitions in the WA and Victorian OHS legislation with the addition of “control” as an element of the test as suitable templates for a national definition.  |
| Q40.  | Should control be an element of the standard? (see Chapter 3)                | See comments at Q39.  |

|      | Question  | CME Position  |
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| Q41. | Should a test or examples for assessing compliance with the standard be set out in the model OHS Act or in subordinate instruments? If so, what would that contain?   | CME advocates the use of guidelines and advisory information rather than statutory or regulatory provisions to address this issue. The impact of case law means that advice on issues of practicability needs to be able to be readily updated and disseminated.                          |
| Q42. | Should 'hazard' and 'risk' be defined in the model OHS Act?   | Clear and unambiguous definitions of "hazard" and "risk" are essential.   |
| Q43. | Should a definition of 'reasonably practicable', or an alternative standard, include a reference to risk management principles and processes (hazard identification, risk assessment and risk control)? If so, how? | The model OHS Act should embed risk management principles and concepts as the basis for the management of all OHS issues. Section 20 of the Victorian <i>Occupational Health and Safety Act 2004</i> provides a sufficient template for a national provision relating to risk management. |
| Q44. | Should risk management principles and processes be specifically required by the model OHS Act in relation to the general duties, or otherwise?  | See comments at Q43.  |

|   | Question  | CME Position  |
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| <b>CONSULTATION, PARTICIPATION AND REPRESENTATION</b> |   |   |
| Q45.  | What provisions should be made in the model OHS Act for consultation?                       | <p>Active workforce participation is a fundamental element of effective management of OHS. The mining industry has well developed systems for engagement with its workforce in maintaining and improving OHS outcomes. CME supports the clause 17 of the NMSF Legislation Framework as a suitable basis for workplace consultative arrangements for OHS. This framework provides:</p> <p style="padding-left: 40px;">Legislation shall provide for consultation processes which acknowledge the right of all employees to be involved in the development of the risk-based safety and health management system, policies and practices. The consultation process shall include mine-site consultation which can involve safety and health committees and mine employees' safety and health representatives, and shall provide a mechanism for resolution of safety and health disagreements.</p> <p>The approach to workplace consultation, participation and representation for OHS is similar across the Australian jurisdictions. CME argues that generally the present consultative arrangements are sufficiently flexible to enable workplaces to establish mechanisms to facilitate effective workforce participation in OHS.</p> <p>Unions should not have a mandatory role in establishing workplace consultative arrangements.</p> |
| Q46.  | What are the work relationships to which a consultation provision should apply?             | As far as possible consultative arrangements should be workplace focussed and provide for all persons in the workplace to be able to participate in OHS related matters. This means that the employer-employee relationship should not be the sole determinant of consultation obligations or entitlements. Contractors and labour hire personnel should be included in the consultative arrangements where they are part of the workforce at a particular workplace.   |
| Q47.  | Should there be different levels of consultation required for different work relationships? | The model Act should contain a minimum of prescription concerning consultative structures so as to leave workplaces with sufficient flexibility to determine the arrangement which are most effective for their particular workplace. If specific processes related to consultation need to be prescribed, these should be implemented through regulation rather than in the model Act.   |

|      | Question   | CME Position  |
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| Q48. | <p>How should consultation be provided for:</p> <ul style="list-style-type: none"> <li>- a multi-employer worksite;</li> <li>- an employer with operations across more than one worksite;</li> <li>- small business;</li> <li>- remote workplaces;</li> <li>- precarious employment; and</li> <li>- workers from culturally and linguistically diverse backgrounds.</li> </ul> | See comments at Q47.  |
| Q49. | Should there be a requirement for establishing HSRs and HSCs?  | CME supports the continued use of Health and Safety Representatives (HSRs) and Committees (HSCs) as the means by which workforce participation is enabled.  |
| Q50. | What provision should be made in the model OHS Act to enable the effective participation and representation of workers to improve health and safety outcomes?  | See comments at Q49.  |
| Q51. | How, and in what circumstances should HSRs be appointed or elected, and HSCs established?  | The model Act should not contain a prescriptive requirement for HSRs to be elected. HSRs are most effective in large, high risk workplaces where communication on OHS matters is pivotal. The present arrangements whereby the employer or employees at a workplace are able to request the election of HSRs should remain - CME supports the use of the relevant provisions of the WA or Victorian OHS legislation as the basis of the model Act provisions. |
| Q52. | Where an election is required, who should be entitled to vote?   | The processes of electing HSRs should be workplace based and third parties, including unions, should not have any role in the election process. Workplaces should have the flexibility to determine both the extent of coverage of a HSR (e.g. designated work groups) and the process for conducting the election. Only persons who will be represented by the relevant HSR should be entitled to vote.  |

|      | Question  | CME Position  |
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| Q53. | What should the powers and functions of HSRs be?    | <p>There is a high degree of commonality across the jurisdictions in the functions ascribed to HSRs and HSCs in current OHS legislation. With the exception of the ability of HSRs to issue provisional improvement notices (PINS), the CME is not aware of any major issues associated with the functions of HSRs and HSCs. CME supports the functions of HSRs outlined in the NMSF Consultation Framework:</p> <ul style="list-style-type: none"> <li>▪ conduct investigations;</li> <li>▪ accompany an inspector in investigations and inspections;</li> <li>▪ accompany an employer in their investigations;</li> <li>▪ in consultation with the employer to inspect all or part of the workplace at any time in relation to OHS matters;</li> <li>▪ make enquiries about operations relevant to health and safety;</li> <li>▪ access to relevant documents and information;</li> <li>▪ consult and cooperate with the manager of the operation and liaise with the employees on OHS matters;</li> <li>▪ participate in the development and implementation of the safety management system;</li> <li>▪ make recommendations on OHS training;</li> <li>▪ receive a copy of any improvement or prohibition notices issued;</li> <li>▪ be informed immediately of any accident or hazardous occurrence that may affect the safety and/or health of any worker and to be given copies of any reports prepared by or on behalf of the employer in relation to the occurrence.</li> </ul> |
| Q54. | What should the structure and functions of HSCs be? | <p>See comments at Q53. CME supports the functions of HSCs outlined in the NMSF Consultation Framework:</p> <ul style="list-style-type: none"> <li>▪ to facilitate consultation and cooperation between employers and the employees in relation to OHS matters.</li> <li>▪ to keep itself informed as to standards relating to safety and health</li> <li>▪ to recommend to the employer and employees the establishment, maintenance and monitoring of programmes relating to the health and safety of employees</li> <li>▪ to keep in a readily accessible place, information in relation to hazards that arise or may arise at the workplace;</li> <li>▪ to consider and make such recommendations to the employer as to any changes or intended changes to the workplace that may reasonably be expected to affect the health and safety of employees at the workplace;</li> <li>▪ to consider any matters referred by a health and safety representative; and</li> <li>▪ to perform such other functions which may be prescribed in regulations or given to the committee, with its consent, by the employer.</li> </ul>   |

|      | Question  | CME Position   |
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| Q55. | What training and qualifications should members of HSRs and members of HSCs have?   | HSRs should continue to be entitled to receive initial and refresher training relevant to their functions. Training for HSC members should be a workplace issue to be determined the reference to the skills and experience of committee members and the hazards present in the workplace. |
| Q56. | Are there alternative mechanisms that should be considered?   | No comments.   |
| Q57. | To what extent should the specific requirements be dictated in the OHS Act, and to what extent in regulations?                                  | See comments at Q47.   |
| Q58. | Are there classes of workers for whom current representation requirements are not effective? How could the model OHS Act address such problems? | See comments at Q46.   |

|      | Question  | CME Position   |
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| Q59. | Should the model OHS Act include right of entry provisions? If so, who should be entitled to exercise the right of entry? | <p>CME does not support the model OHS Act containing right of entry entitlements for unions or other parties. Right of entry should be limited to inspectors.</p> <p>The model OHS Act should provide robust workplace based mechanisms for participation, consultation and resolution of issues rendering an explicit role for unions or other third parties superfluous. Employees can continue to exercise their right to be represented by their union, which can raise any health and safety issue with the employer or an inspector without any need to enter the workplace.</p> <p>The use of OHS laws for industrial purposes by unions has the potential to significantly undermine workplace consultative arrangements. The WA mining industry has established effective workplace consultation without the involvement of unions. The focus in the model OHS Act should be on establishing effective and genuine workplace consultation.</p> <p>In the event the national OHS Act does contain provision for rights of entry, these should be entirely consistent with any equivalent provisions in national industrial relations legislation. CME endorses the submission of the Australian Mines and Metals Association (AMMA) regarding right of entry issues.</p> |
| Q60. | Should the model OHS Act specify training and qualifications for such persons?  | See comments at Q59.   |
| Q61. | In what circumstances should the right of entry be exercisable?   | See comments at Q59.   |
| Q62. | What powers should be exercisable upon entry, and subject to what conditions or limitations?                              | See comments at Q59.   |
| Q63. | What provisions should be made in the model OHS Act to assist the effective resolution of health and safety issues?       | CME supports the approach to issue resolution contained in the WA and Victorian OHS legislation. This approach encourages workplaces to develop their own issue resolution procedures and as a minimum requires genuine attempts by the parties at the workplace to resolve issues prior to the involvement of the regulator.  |

|      | Question  | CME Position   |
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| Q64. | When should issue resolution procedures be activated?   | See comments at Q63.   |
| Q65. | If issue resolution procedures are to be specified, in whole or in part, should they appear in the model OHS Act or in the regulations?   | The model Act should contain a minimum of prescription concerning issue resolution with any detail that is deemed necessary located in regulations.  |
| Q66. | How best can the model OHS Act ensure resolution procedures are, where possible, agreed at a workplace level?   | No specific comments.  |
| Q67. | Should a model OHS Act specifically provide for the right of workers to refuse or cease to undertake work they consider unhealthy or unsafe?  | Since their inception WA's OHS laws have contained an explicit right for individual workers to refuse to work where there are reasonable grounds to believe that to continue to work would expose the worker to a risk of imminent and serious injury or harm to health. A similar provision has existed in the mining safety legislation since 1994.  |
| Q68. | Should a model OHS Act provide for the right of a HSR to direct that work cease? If so, what conditions, limitations or restrictions should be placed on the exercise of the right by a worker or representative? | CME is strongly opposed to HSRs having the right to direct that work cease. The ability of suitably trained HSRs to issue Provisional Improvement Notices (PINS) is a sufficient mechanism to enable issues to be resolved where there is no agreement on a risk that is perceived to be significant. The conditions relating to the issuance of PINS in the WA and Victorian legislation provides a suitable template for national provisions.  |
| Q69. | Should the model OHS Act require payment of wages and/or associated benefits to workers who have exercised the right to cease work in accordance with the Act? If so, what should be provided?                    | Notwithstanding the potential for the right to cease work to be misused for industrial purposes, CME is not aware of any recent issues with this rarely used entitlement and supports inclusion of a similar entitlement in the model OHS Act. As in the WA legislation, the right to cease unsafe work and associated wage entitlements should be subject to compliance with relevant procedural requirements including an obligation on workers to undertake safe alternative work. There should be penalties for misuse of the right to cease work. |

|      | Question   | CME Position  |
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| Q70. | In addition, or alternatively, should the model OHS Act provide for the resolution of disputes associated with cessation of work?  | See comments at Q67-69.   |
| Q71. | What provision should be made in the model OHS Act to protect persons from discrimination or victimisation and who should be protected?  | <p>CME supports inclusion in the model OHS Act of a protection from discrimination as a result of the performance of any function or activity provided for in the Act. The relevant provisions of the WA <i>Occupational Safety and Health Act</i> provide a suitable template for such a provision.</p> <p>CME does not support a broadly cast provision that relates to any action by a person that could be seen to be related to OHS - any protection provided should relate specifically to the legislation.</p> |
| Q72. | Who should be able to bring an action for unlawful discrimination? Should the model OHS Act allow representative actions?  | <p>Actions under the model OHS laws relating to unlawful discrimination should only be able to be commenced by the regulator and should be subject to proceedings consistent with other breaches of the legislation. The model OHS Act should not allow for representative actions related to allegations of unlawful dismissal.</p> <p>CME is <u>absolutely</u> opposed to unions or other third parties having any role in the commencement of actions related to allegations of unlawful discrimination.</p>       |
| Q73. | Should a breach of the provisions be the subject of criminal or civil proceedings or both?   | See comments at Q72.  |
| Q74. | Who should have the burden of proving relevant elements of offences (e.g. conduct and intention) and should the standard of proof be the civil standard (on the balance of probabilities) or criminal standard (beyond a reasonable doubt) for these elements? | The burden of proof in all actions under OHS laws should rest with the prosecution.   |

|   | Question   | CME Position   |
|---|--|--|
| Q75.  | Should specific powers be available to the regulator to provide protection from ongoing discrimination or victimisation pending proceedings?   | No specific comments.  |
| Q76.  | What remedies should be available to the victims?  | No specific comments.  |
| Q77.  | Should there be mechanisms in the model OHS Act for resolution of discrimination or victimisation disputes, as alternatives to criminal prosecution by the regulator, such as conciliation or arbitration before a tribunal? | CME supports provision for mandatory conciliation requirements for disputes relating to discrimination or victimisation. Resolution of disputes of this kind in a non-prosecutorial manner is beneficial to all parties. |
| Q78.  | Are there any other issues in relation to consultation, participation and representation that should be addressed in the model OHS Act?  | No specific comments.  |
| <b>REGULATOR FUNCTIONS, POWERS AND ACCOUNTABILITIES</b> |  |  |
| Q79.  | Should the model OHS Act provide for the establishment, functions, powers and accountability of regulators? If so, what should be provided?  | The model OHS Act should contain broad provisions that establish the functions and powers of the OHS regulator. It is a fundamental obligation of governments to establish and adequately resource OHS regulators.       |

|      | Question  | CME Position   |
|------|---|--|
| Q80. | Should the model OHS Act require regulators to publish enforcement and prosecution policies?                                  | Enforcement and prosecution policies should be agreed nationally.<br><br>Jurisdictions should retain the capacity to determine enforcement and prosecution priorities within the context of an overarching national policy.  |
| Q81. | Should the model Act include provisions that allow the making of interpretative documents?                                    | The model OHS Act should provide a head of power and approval process to facilitate development and publication of interpretative documents similar to those currently issued under the Victorian OHS legislation.   |
| Q82. | Are there any functions and powers that should be available to an OHS regulator that should not be exercised by an inspector? | Yes. Dispute resolution by independent persons appointed by the regulator as opposed to the inspector if mediation managed by the inspector is not successful.   |
| Q83. | Should the advisory and enforcement functions of an OHS regulator be separated? If so, how and why?                           | The model OHS Act should not contain detailed provisions relating to the operations of regulators and, in particular, should not seek to separate enforcement and advisory functions. It is essential the model OHS Act neither limit the capacity for innovation by regulators nor the ability of jurisdictional regulators to make decisions about priorities and resource allocation. |
| Q84. | How should the model OHS Act provide for the appointment, qualifications, powers, functions and accountability of inspectors? | Yes. No specific comments.   |

|      | Question   | CME Position   |
|------|--|--|
| Q85. | Should the model OHS Act strengthen the role and capacity of inspectors to provide advice and assistance? If so, how?                          | <p>CME considers it essential the model OHS Act provide OHS inspectors with the clear authority to provide advice and assistance. The limitations on inspectors providing advice that prevail in most jurisdictions do not serve to improve health and safety. While the challenges of balancing an enforcement and advisory role are clear, a legislative basis for inspectors to play a proactive role in improving safety and health outcomes is a high priority for the WA mining industry.</p> <p>CME is of the view that the role of the regulator established in the model OHS Act should include audit and verification of the application of risk management practices and in no way be limited to a focus on compliance against prescriptive requirements. CME supports the regulator responsibilities outlined in the NMSF Legislation Framework:</p> <p style="padding-left: 40px;">Legislation shall provide for the establishment of a professional and technically competent mines inspectorate with appropriate experience, skills and qualifications. The inspectorate shall be provided with adequate powers and resources to undertake an independent evaluation of the operator’s safety and health management system. This shall include: enforcing the legislation; monitoring safety and health performance; inspecting and auditing mines; providing coaching, mentoring, education and sharing of information including during emergencies; directing remedial actions to be undertaken in the event of unsafe practices; and investigating complaints, fatalities, serious accidents, dangerous occurrences and any other matters relating to the safety and health of mine workers.</p> |
| Q86. | Are there any circumstances in which an inspector should be independent from direction, instruction or review by a regulator?                  | No.  |
| Q87. | Should an inspector be able to modify, amend or cancel any notice or instrument issued by the inspector? If so, why and in what circumstances? | No specific comments.  |

|                                   | Question   | CME Position  |
|-----------------------------------|--|---|
| Q88.                              | What provisions should be made for the transparent internal review of decisions in the model OHS Act? What matters should be reviewable? What further appeal should be allowed?                                | No specific comments.   |
| Q89.                              | Are there any other issues in relation to the powers, functions and accountability of regulators and their inspectors that should be addressed in the model OHS Act?   | No specific comments.   |
| <b>COMPLIANCE AND ENFORCEMENT</b> |  |   |
| Q90.                              | Should the model OHS Act include a hierarchy of enforcement measures in order of escalation? What should such measures consist of?   | In the main the present graduated compliance instruments of directions, improvement notices, prohibition notices, and prosecutions have proved effective and sufficient tools for regulators. |
| Q91.                              | Should these be statutory principles or requirements for the appropriate use of enforcement measures? If so, should they be contained in the model OHS Act, regulations or other policy or guidance documents? | CME supports the model OHS Act providing for these instruments being used in the context of transparent compliance and prosecution policies issued by regulators.                             |
| Q92.                              | What provision should be made for PINs, improvement notices and prohibition notices in the model OHS Act?  | No specific comments.   |

|      | Question   | CME Position   |
|------|--|--|
| Q93. | Should PINs, improvement and prohibition notices contain recommendations about how to achieve compliance?  | It is essential the model OHS Act provide OHS inspectors with the clear authority to provide advice and assistance. The limitations on inspectors providing advice that prevail in most jurisdictions do not serve to improve health and safety.<br><br>See comments at Q85. |
| Q94. | What provisions should be made to allow for the review of PINs, improvement and prohibition notices?   | CME supports the relevant provisions of the WA OHS legislation related to the review of notices as a suitable template for the model OHS Act in this regard.   |
| Q95. | Should there be a specified minimum timeframe to allow for compliance with PINs, improvement or prohibition notices?   | See comments at Q94.   |
| Q96. | Should the lodging of an application for an internal review or an appeal application affect the continued operation of notices,? If so, what should the effect be? | See comments at Q94.   |

|       | Question  | CME Position   |
|-------|---|--|
| Q97.  | Should the model OHS Act provide for infringement notices? If so, when and for what offences should they be issued?   | <p>CME does not support the introduction of an infringement notice scheme on the basis that it will not lead to any significant improvement in safety and health outcomes. CME’s primary concern is that an infringement notice scheme would serve to reinforce the attachment of some regulators to prescriptive modes of intervention as opposed to working to address high priority hazards and risks.</p> <p>By design infringement notices would deal only with minor issues where there happens to be a strict liability standard established in regulations - they are akin to “parking tickets”. Small monetary penalties for breaches of minor consequence would seem unlikely to either act as a spur to better practice or constitute a meaningful ‘punishment’ for the employer.</p> <p>Even if an infringement notice system were to deliver a high degree of compliance with ‘minor issues’ it is not necessarily the case that low frequency, high impact risks would be adequately addressed. A diversion of regulator and industry resources from high risk to minor issues seems difficult to justify.</p> |
| Q98.  | Should the administration of infringement notices occur under OHS law or individual state legislation?  | CME does not support the introduction of an infringement notice scheme - see comments at Q97.  |
| Q99.  | What amounts should be specified as fines for infringements?  | CME does not support the introduction of an infringement notice scheme - see comments at Q97.  |
| Q100. | Should the model OHS Act provide for injunctions to ensure compliance with the model OHS Act? If so, in what circumstances and what evidence should be required to apply for an injunction? | No specific comments.  |

|                     | Question  | CME Position   |
|---------------------|---|--|
| Q101.               | Should the model OHS Act provide for the use of enforceable undertakings as an alternative to prosecution for an offence against the Act? If so, for what offences?         | <p>CME supports extending the scope of existing enforceable undertakings to include circumstances where the regulator alleges but has not prosecuted a breach of the legislation. Use of this enforcement tool under present WA OHS laws has been limited as enforceable undertakings can only be agreed once the regulator has successfully prosecuted an employer. Enabling companies and the regulator to consider without-prejudice enforceable undertakings before or during formal proceedings would enhance the ability of parties to respond to a prima facie breach with measures reflecting the seriousness of the issues at hand, the compliance record of the employer and the costs of alternative actions.</p> <p>This measure would be attractive to employers who may otherwise be subject to prosecution and to regulators who could affect improvements without the need for resource intensive legal proceedings. The relevant provisions of the Victorian <i>Occupational Health and Safety Act 2004</i> would seem to provide a suitable template for the model OHS Act in this regard.</p> |
| Q102.               | Should the giving of an enforceable undertaking result in an admission of fault or liability?   | See comments at Q101.  |
| Q103.               | Are there any other issues in relation to compliance and enforcement that should be addressed in the model OHS Act?   | No specific comments.  |
| <b>PROSECUTIONS</b> |   |  |
| Q104.               | Should the model OHS Act provide for breaches of duties or obligations to be criminal offences, or be the subject of civil proceedings and penalties, or a mixture of both? | No specific comments.  |

|       | Question  | CME Position   |
|-------|---|--|
| Q105. | Which duties or obligations should be the subject of criminal offences and penalties and which may appropriately be heard as civil matters? | No specific comments.  |
| Q106. | Which courts or tribunals should have jurisdiction to hear prosecutions for OHS offences?   | CME does not support OHS prosecutions being undertaken outside the jurisdiction of the courts. Both civil and criminal offences should be dealt with in courts of general jurisdiction not in separate tribunals (including tribunals sitting as a court or in specialist OHS courts). Specifically, OHS prosecutions should not be within the jurisdiction of state based industrial relations commissions or tribunals.  |
| Q107. | Is it appropriate for prosecutions to be heard by specialist courts or tribunals (or specialist divisions in courts)? Why?                  | See comments at Q106.  |
| Q108. | To where should appeals lie? Should the right to appeal be subject to any conditions and if so, what should they be?                        | CME supports all parties having access to the right of appeal. Appeals should lie as they do in comparable civil or criminal matters.  |
| Q109. | Should defendants be entitled to trial by jury in prosecutions for any offence and, if so, which?   | For any offence that may result in a penalty of imprisonment, defendants should be entitled to trial by jury with the standard of the burden of proof being beyond reasonable doubt.   |
| Q110. | Who should be entitled to commence criminal proceedings?  | Prosecutions for breaches of OHS laws should only be able to be commenced by the regulator. CME is <u>absolutely</u> opposed to unions or other third parties having any role in the commencement of OHS prosecutions.   |
| Q111. | If the model OHS Act provides for civil proceedings for breach, who should be entitled to commence such proceedings?                        | Prosecutions for breaches of OHS laws should only be able to be commenced by the regulator. CME is <u>absolutely</u> opposed to unions or other third parties having any role in the commencement of OHS prosecutions. Similarly, the model OHS Act must not contain provisions for unions or others to receive moieties from penalties applied following OHS prosecutions. There is no evidence that involvement of unions and third parties in this way improves safety and health outcomes. |

|       | Question  | CME Position  |
|-------|---|---|
| Q112. | What should appropriate time limits be for the commencement of a prosecution and why?   | CME supports the inclusion of specific time limits for commencement of prosecutions for OHS matters. The present situations in some jurisdictions where a delay in commencement of prosecution leaves employers and officers in “limbo” for long periods are not acceptable. CME advocates a requirement for OHS prosecutions to commence within 2 years of the alleged breach. |
| Q113. | Should the model OHS Act include specific provisions for the conduct of prosecutions, and what should they be? Alternatively, should that be left to the rules of criminal law and rules of the relevant court or tribunal? | No specific comments.   |
| Q114. | Should the model OHS Act contain specific evidentiary procedures for OHS prosecutions? If so, why and what procedures?  | No specific comments.   |
| Q115. | Should the proof of any elements of an offence be affected by specific provisions in the model OHS Act? If so, which elements and how?  | No specific comments.   |
| Q116. | What should be the evidentiary status of codes of practice, regulations and other subordinate instruments?  | CME supports the model OHS Act including an explicit deemed to comply provision to the effect that compliance with a regulation or approved code of practice is deemed to demonstrate compliance with a relevant general duty.  |
| Q117. | Is ‘reasonably practicable’ an appropriate standard for the model OHS Act?  | CME is strongly of the view that ‘reasonably practicable’ is a necessary and sufficient qualification on the duties to be established in the model OHS Act. The onus of proof in establishing this standard must always rest with the prosecution regardless of the type of offence or the person being prosecuted.   |

|       | Question   | CME Position   |
|-------|--|--|
| Q118. | Should the prosecutor or the duty holder be required to prove whether the standard was met? Why?   | See comments at Q117.  |
| Q119. | Should the burden of proving elements of an offence differ between different types of offences (e.g. duties of care and procedural obligations)? If so, why?   | See comments at Q117.  |
| Q120. | What, if any, defences should the model OHS Act provide?   | See comments at Q116-117.  |
| Q121. | Should the burden of proof or defences be different for a corporation and an individual (officer or employee)? If so, why?   | See comments at Q117.  |
| Q122. | Should 'officers' of a corporation be liable to an offence because the corporation has committed an offence?   | No specific comments.  |
| Q123. | How should officer be defined?   | No specific comments.  |
| Q124. | Should liability of an officer, if any, be subject to the prosecution proving that an act or omission by the officer contributed to the offence of the corporation? Alternatively, should the officer be automatically guilty of an offence, subject only to proving a defence? Why? | CME is absolutely opposed to construction of officers' duties on the basis of strict liability. CME strongly supports the present approach in the Western Australian and Victorian OHS legislation in which liability is imposed on a participatory basis rather than an automatic presumption that someone is guilty because the corporation has committed an offence.<br><br>The burden of proof must rest with the prosecution. |

|       | Question  | CME Position          |
|-------|---|-----------------------|
| Q125. | Should the model OHS Act provide for a test for determining liability of an officer? If so, what should the test be or contain? | See comments on Q124. |
| Q126. | Should the model OHS Act provide for specific defences to be available to an officer? If so, what?                              | See comments on Q124. |
| Q127. | What should the approach to officers of unincorporated associations or volunteer officers be?                                   | No specific comments. |
| Q128. | For which offences should monetary penalties (fines) be imposed?  | No specific comments. |
| Q129. | Should maximum fines be provided in the model OHS Act, or is there an alternative approach?                                     | No specific comments. |
| Q130. | Should the level of fines be different for the various offences? If so, for what offences and at what levels?                   | No specific comments. |
| Q131. | Should there be a statutory minimum fine for some offences? If so, what?  | No specific comments. |
| Q132. | Should the level of penalties depend on culpability (recklessness) or outcome (death) or repeat offences?                       | No specific comments. |

|       | Question   | CME Position   |
|-------|--|--|
| Q133. | Are there options that could facilitate more consistent outcomes across the jurisdictions, such as a national register of decided cases?           | No specific comments.  |
| Q134. | What penalty options should be available in addition to or instead of fines?   | No specific comments.  |
| Q135. | Should the model OHS Act provide for terms of imprisonment for specified offences? If so, which offences and what maximum periods of imprisonment? | CME strongly endorses the MCA position that the model OHS Act should not include provision for imprisonment. Custodial sentences for criminal offences should be consistent with current practice for general criminal offences under the Crimes Act.  |
| Q136. | Should there be specific offences relating to workplace death or serious injury? If so, what?  | CME strongly endorses the MCA position that prosecutions alleging culpability for the death or serious injury of a person should be dealt with under manslaughter or similar provisions of the criminal law. Death or serious injury offences should be handled as would any other criminal offence under the Crimes Act. There is no justification in establishing a separate offence such as "industrial manslaughter" or an offence under an issue-specific legal framework like the OHS Act. |
| Q137. | Should breaches of OHS duties resulting in death or serious injury be dealt with in OHS legislation or in the Crimes Act?                          | CME strongly endorses the MCA position that prosecutions alleging culpability for the death or serious injury of a person should be dealt with under manslaughter or similar provisions of the criminal law. Death or serious injury offences should be handled as would any other criminal offence under the Crimes Act. There is no justification in establishing a separate offence such as "industrial manslaughter" or an offence under an issue-specific legal framework like the OHS Act. |

|                     | Question  | CME Position  |
|---------------------|---|---|
| Q138.               | Should the consequences of the breach, rather than only the degree of culpability, determine the penalties to be imposed for some offences? If so, which offences and how should this be dealt with in the model OHS Act? | See comments on Q135-137.   |
| Q139.               | What, if any, provisions should be included in the model OHS Act for the enforcement of penalties imposed by a court?   | CME considers enforcement of penalties imposed by courts is a matter for the relevant court not the OHS Act.                  |
| Q140.               | Should the model OHS Act provide for the enforcement of penalties against officers or other persons? If so, how and subject to what conditions, limitations, defences or requirements?                                    | CME considers enforcement of penalties against officers and other persons is a matter for the relevant court not the OHS Act. |
| Q141.               | Are there any other issues in relation to prosecutions that should be addressed in the model OHS Act?   | No specific comments.   |
| <b>OTHER ISSUES</b> |   |   |
| Q142.               | Should the power to make regulations be limited and if so, in what way?   | No specific comments.   |

|       | Question   | CME Position  |
|-------|--|---|
| Q143. | Should regulations provide for summary offences with lower penalties, or should some breaches under regulations also be taken to be a breach of the model OHS Act? | No specific comments.   |
| Q144. | What provisions should be made in the model OHS Act relating to the development and approval of codes of practice?   | No specific comments.   |
| Q145. | How should an effective reporting system be provided for in the model OHS Act without an unnecessary compliance burden?  | No specific comments.   |
| Q146. | What provisions should be made in the model OHS Act for the external review of regulatory decisions?   | No specific comments.   |
| Q147. | Should the model OHS Act include provisions for the resolution of OHS issues by conciliation or arbitration?   | No specific comments.   |
| Q148. | Should the model OHS Act facilitate tripartism in the administration of OHS regulation, and if so, how?  | <p>CME is strongly supportive of tripartite consultation in OHS policymaking but is opposed to either industry or unions having a direct role in the administration of OHS. The OHS regulator must maintain a high level of independence.</p> <p>The WA Commission for Occupational Safety and Health and its Mining Industry Advisory Committee provide models for ensuring governments have access to high quality advice on OHS issues. While the role of state based consultative bodies is likely to change where laws and regulations are consistent, these bodies would still be able to make a contribution through working with regulators to identify inspection, information and education priorities.</p> |

|       | Question   | CME Position   |
|-------|--|--|
| Q149. | Should there be some provision for tripartite committees that deal with OHS matters in particular industries?  | CME supports the establishment of tripartite industry OHS advisory committees to provide governments and regulators with information and advice on OHS issues that are specific to particular industries. Industry OHS committees should not be mandated in the model OHS Act with any requirements established through regulation. Industry committees should be established for high risk industries only. |
| Q150. | What areas should be subject to formal mutual recognition provisions in the model OHS Act?   | No specific comments.  |
| Q151. | What is the most appropriate way for a model OHS Act to provide for permits and licensing for workers engaged in high risk work that results in: <ul style="list-style-type: none"> <li>- better OHS outcomes;</li> <li>- greater efficiency and effectiveness;</li> <li>- lower regulatory compliance and enforcement burdens; and</li> <li>- improved harmonisation of the requirements for such permits and licensing for industry across Australia?</li> </ul> | Specific requirements relating to permits and licensing should not be contained in the model OHS Act. The Act should contain a head of power to enable the promulgation of regulations related to licensing and permits.   |
| Q152. | How should the model OHS Act be framed to reduce or remove the extent of overlap between federal and State or Territory OHS laws, or minimise the difficulties of such overlap?  | Harmonisation should be achieved through the implementation of template legislation in each state and territory with jurisdictions retaining primary regulatory responsibility for OHS so as to ensure prevention and compliance resources can be allocated on the basis of local priorities.  |

