



**Queensland**  
Government

**Report on the Review of the Roles and  
Responsibilities of Queensland Government  
Agencies in the Administration of Workplace  
Health and Safety Regulation**

**Service Delivery and Performance Commission**

**June 2008**

*A Smart State Initiative*

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The Honourable Anna Bligh MP  
Premier of Queensland  
Executive Building  
100 George Street  
BRISBANE QLD 4000

Dear Premier

In accordance with section 30 of the *Service Delivery and Performance Commission Act 2005*, I hereby provide you with the Commission's report on the Review of the Roles and Responsibilities of Queensland Government Agencies in the Administration of Workplace Health and Safety Regulation.

The development of this report has been the result of extensive research and analysis, and consultation with industry, unions and government agencies.

I commend this report to you and provide it for subsequent tabling in the Legislative Assembly.

Yours sincerely



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- businesses, industry associations, unions and other stakeholders who contributed to the Review
- management and staff of the government agencies responsible for administering health and safety legislation
- Commissioners of the Service Delivery and Performance Commission, and
- the Service Delivery and Performance Commission Review Team and support staff.

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## List of Abbreviations, Acronyms and Glossary

ABS	Australian Bureau of Statistics
AEC	Australian Explosives Code
AEMO	Australian Energy Market Operator
AFER	Australian Forum of Explosives Regulators
AMSA	Australian Maritime Safety Authority
ASCC	Australian Safety and Compensation Council
ATC	Australian Transport Council
ATSB	Australian Transport Safety Bureau
CAF	Council for the Australian Federation
CASA	Civil Aviation Safety Authority
CHEM Services	Chemical Hazards and Emergency Management Services
COAG	Council of Australian Governments
DEIR	Department of Employment and Industrial Relations
DES	Department of Emergency Services
DGSM Act	<i>Dangerous Goods Safety Management Act 2001</i>
DME	Department of Mines and Energy
DOCEP	Department of Consumer and Employment Protection (Western Australia)
EPA	Environmental Protection Agency
ESO	Electrical Safety Office
GHS	United Nations Globally Harmonised System of Classification and Labelling of Chemicals
HSE	Health and Safety Executive (Great Britain)
IDHSCC	Inter-departmental Hazardous Substances Coordinating Committee
LGAQ	Local Government Association of Queensland
LPG	Liquefied Petroleum Gas

Marine Safety Act	<i>Transport Operations (Marine Safety) Act 1994</i>
MCMPR	Ministerial Council on Mineral and Petroleum Resources
MHF	Major Hazard Facility
MOU	Memorandum of Understanding
MSQ	Maritime Safety Queensland
NTC	National Transport Commission
OHS	Occupational Health and Safety
QH	Queensland Health
QT	Queensland Transport
SDPC	Service Delivery and Performance Commission
Simtars	Safety in Mines Testing and Research Station
SSAN	Security Sensitive Ammonium Nitrate
WH&S	Workplace Health and Safety
WH&S Act	<i>Workplace Health and Safety Act 1995</i>
WHSQ	Workplace Health and Safety Queensland
WRMC	Workplace Relations Ministers' Council



## Executive Summary and Recommendations

The objective of this Review is to determine the most effective and efficient arrangements for the administration of the government's workplace health and safety responsibilities.

The Review was initiated to investigate concerns that the multiple agencies and pieces of legislation that regulate workplace health and safety may be compromising the Queensland Government's workplace health and safety objectives. The Review was also cognisant of the need to minimise regulatory impacts on business, while maximising the health and safety of workers.

The Review identified ten work units in four government departments, and 11 Acts within the ambit of the Review. Despite this, there are only three Acts that specifically and exclusively deal with workplace health and safety (the *Workplace Health and Safety Act 1995*, the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*). Other Acts affect workplace health and safety to varying degrees through broader legislative scope, for example, transport safety and community safety. Given that the health and safety of its citizens is a fundamental role of government, it should be expected that governments would have a range of Acts and regulations in place to deal with risks to the community.

There are a number of ways improvements to the current arrangements could be achieved, namely:

- legislative amendments in areas of overlap
- improved whole-of-government governance arrangements for health and safety regulation
- improved communication to businesses in areas of multiple regulatory activity
- the development of strategies to address 'gaps' in health and safety regulation
- improved communication and cooperation between regulatory agencies, and
- changes to organisational structures across government.

The Review makes recommendations for change in all of the above areas.

The Review's recommendations were developed within the context of the national reforms currently underway. Virtually all areas under review are subject to a national reform agenda. The pace of these reforms has accelerated markedly since the recent change of government at a national level. This is likely to result in substantial changes to how health and safety legislation is administered across Australia in the near future.

There is a risk these reforms may strengthen alignment at a national level but lead to greater inconsistencies at a state level. The Review has concluded there is a need for strengthened whole-of-government governance arrangements to ensure a consistent Queensland position is being presented at national negotiations. The establishment of a Health and Safety Regulators Council is proposed to achieve this, with specific terms of reference to advise Cabinet on the government's response to the national health and safety reforms, and to enhance other aspects of communication and coordination across health and safety regulators. The Health and

Safety Regulators Council would also have a role in ensuring consistent approaches to key legislative provisions within the state.

The Council should oversee the development of regulatory enforcement strategies and practices, and commit to the continued development of 'best practice' approaches across government, taking into account the validity of different approaches where justified. The Council should also assess agencies' effectiveness in working together as regulators using the criteria outlined in a recent report of the Queensland Ombudsman.

The Review has concluded the current incident notification system should be enhanced so businesses only have to report health and safety issues to the Queensland Government once. This is not to say all health and safety incidents should be reported to the same entity, as this would only add an extra communication step, and associated costs, for all notifications. However, for a particular type of incident (e.g. chemical leak, electrical safety, rail operations incident), a business should know to whom to report the incident – and need only do this once. The relevant regulator must advise other regulators as needed. This should be supported by information material on the revised arrangements.

The Review also proposes regulatory amendments to remove areas of ambiguity between the Acts.

The Review has identified a major gap in responsibility for workplace health and safety in the maritime industry. The *Workplace Health and Safety Act 1995* makes no distinction between workplaces on land and workplaces in the marine environment. Indeed, Workplace Health and Safety Queensland (WHSQ) undertakes extensive regulatory activity in commercial and recreational underwater diving activities. However, WHSQ has incorrectly concluded that Maritime Safety Queensland (Queensland Transport) is responsible for workplace health and safety on ships. As a consequence, there is a gap in terms of delivering structured workplace health and safety services, such as monitoring, auditing, education and information provision, to the operators of commercial vessels and fishing vessels. This needs to be rectified as a matter of urgency, particularly given the high risks faced in these industries.

The Review notes the relatively low level of health and safety incidents in the mining industry. Stakeholders consulted during the Review strongly support the reforms that have taken place in the mining industry in recent years. The Review proposes minor legislative amendments so the requirements for occupational licensing and plant registration under the *Workplace Health and Safety Act 1995* would apply as a minimum requirement on mine sites, petroleum and gas tenures and geothermal exploration sites. It is also proposed the *Dangerous Goods Safety Management Act 2001* be amended so that the major hazard facility provisions of the Act apply at these sites. For administrative efficiency, the Departments of Employment and Industrial Relations (DEIR) and Mines and Energy would put in place joint administrative arrangements for the enforcement of these provisions.

The Review proposes the Director-General of Queensland Transport assess the model proposed by the Queensland Ombudsman's report into the Mining Inspectorate to minimise regulatory capture risks for its applicability to rail safety.

All Memorandums of Understanding (MOUs) between the agencies need to be reviewed and updated. These MOUs need to cover a broader range of issues, including governance arrangements, information sharing, providing advice and

support, managing notifications and referrals, frameworks for resolving disagreements, and responsibilities for incident response and enforcement.

To further streamline the regulation of hazardous substances and dangerous goods, the Review proposes CHEM Services (Department of Emergency Services) be transferred to DEIR. This change will result in there being only three government departments involved in a wide range of health and safety regulation.

## ***Recommendations***

### **Context (Chapter 2)**

1. Cabinet approve the creation of a Health and Safety Regulators Council, as soon as practical, to coordinate the government's response to the national health and safety reforms and to enhance other aspects of communication and coordination across health and safety regulators.
2. The Council to be chaired personally by the Director-General, Department of Employment and Industrial Relations, with the Chair to arrange an assessment of the effectiveness of the Council to be provided to the Public Service Commission by 30 June 2009.
3. Cabinet approve the Terms of Reference for the Council (Appendix 5).

### **Legislative Framework (Chapter 3)**

4. In negotiating the national health and safety reforms, the Health and Safety Regulators Council develop standardised approaches to key equivalent legislative provisions where appropriate, for Cabinet approval, including:
  - a) the statutory health and safety duties
  - b) how the statutory duties are to be met
  - c) use of safety management systems
  - d) incident reporting requirements, and
  - e) formal inquiry powers.
5. The Health and Safety Regulators Council develop administrative arrangements, and accompanying information material, by 31 March 2009 to streamline health and safety incident reporting requirements for businesses, as follows:
  - a) a business need only report a particular type of incident (e.g. chemical leak, electrical safety, rail operations incident) to one government regulator
  - b) the relevant regulator to refer the incident to other regulators as needed, and
  - c) the business would meet its statutory obligations by reporting the incident once.
6. The Health and Safety Regulators Council develop proposals to amend the relevant health and safety Acts to remove areas of ambiguity between the Acts (as identified in Appendix 8) for Cabinet consideration by 31 December 2008.
7. The Health and Safety Regulators Council identify industries where the impact of overlapping legislation is most significant (e.g. chemicals and plastics) and

develop information material on their compliance responsibilities by 31 March 2009.

8. The Directors-General of the Department of Employment and Industrial Relations and Queensland Transport develop, for Cabinet consideration by 31 December 2008, strategies to strengthen the government's workplace health and safety responsibilities in the maritime industry, including consideration of the following:
  - a) establishing an Industry Standing Committee for the maritime industry
  - b) developing an Industry Action Plan for the maritime industry
  - c) developing a standard under the *Transport Operation (Marine Safety) Act 1994* to clearly outline the meaning of 'operating' a vessel, and
  - d) developing a new interdepartmental Memorandum of Understanding with clear responsibilities for all aspects of workplace health and safety in the maritime industry.
9. The Director-General of the Department of Employment and Industrial Relations seek Cabinet approval by 31 December 2008 to amend the *Workplace Health and Safety Act 1995* to ensure that:
  - a) the requirements for occupational licensing under the Act apply as a minimum requirement on mine sites, petroleum and gas tenures and geothermal exploration sites, and
  - b) the plant registration requirements under the Act apply as a minimum requirement on mine sites, petroleum and gas tenures and geothermal exploration sites.
10. The Director-General of the Department of Employment and Industrial Relations seek Cabinet approval by 31 December 2008 to amend the *Dangerous Goods Safety Management Act 2001* so the major hazard facility provisions of the Act apply on mine sites, petroleum and gas tenures and geothermal exploration sites.
11. The Directors-General of the Department of Employment and Industrial Relations and the Department of Mines and Energy put in place joint administrative arrangements for the enforcement of provisions relating to occupational licensing, plant registration and major hazard facilities by 31 March 2009.

#### **Regulatory Approach (Chapter 4)**

12. The Director-General, Queensland Transport, assess the model proposed by the Queensland Ombudsman's report into the Mining Inspectorate to minimise regulatory capture risks and report to the Minister for Transport on its applicability to rail safety by 31 December 2008.
13. Health and safety regulators engage in periodic reviews (at least once every three years) of their regulatory strategy and practices by independent experts to ensure they represent a balanced and 'best practice' approach to regulatory non-compliance. Health and safety regulators who have not undertaken a review of their regulatory strategy and practices in the past two years to initiate a review by 31 March 2009.

14. The Health and Safety Regulators Council oversee the reviews of regulatory strategy and practices and commit to the continued development of 'best practice' approaches taking into account the validity of different approaches.
15. Health and safety regulators publish their compliance and enforcement policies on their websites by 31 December 2008.
16. The Health and Safety Regulators Council assess their agencies' effectiveness in working together as regulators using, as a minimum, the measures outlined in the Queensland Ombudsman's recent report on good regulatory practice, *Tips and Traps for Regulators*, (November 2007), by 31 March 2009.
17. The Directors-General of Queensland Transport and the Department of Employment and Industrial Relations ensure that regulatory responsibilities between Workplace Health and Safety Queensland (DEIR) and Rail Safety (Queensland Transport) be addressed as a priority and incorporated into a new Memorandum of Understanding to support the commencement of the *Rail Safety Act 2008*.
18. Health and safety regulators ensure all Memorandums of Understanding between agencies are progressively reviewed and updated by 30 June 2009, overseen by the Health and Safety Regulators Council.
19. Health and safety regulators ensure all future Memorandums of Understanding cover a broader range of issues, including governance arrangements, information sharing, providing advice and support, managing notifications and referrals, frameworks for resolving disagreements, and responsibilities for incident response and enforcement.
20. Health and safety regulators ensure all Memorandums of Understanding be made publicly available by 30 June 2009.

### **Organisational Arrangements (Chapter 5)**

21. CHEM Services (Department of Emergency Services) be transferred to the Department of Employment and Industrial Relations as soon as practical, ensuring that the remuneration levels, relationships with emergency response teams and separate specialist capacity for major hazard facilities regulation and associated activities are maintained.

# 1 Introduction

## 1.1 Background

The objective of this Review is to determine the most effective and efficient arrangements for the administration of the government's workplace health and safety responsibilities.

Minimising workplace health and safety injury and illness is a critical role for government. Workplace injury and illness impose significant costs on injured workers and their families, employers, the wider community and the Queensland economy. In 2005–2006, there were approximately 80 110 compensated and 75 382 uncompensated incidents at an estimated total cost of \$5.2b, or 2.8% of Queensland's Gross State Product. The direct cost of workers compensation payments alone totalled \$814.4m. However, human capital cost, that is, the indirect cost of loss of long term production, either through reduced work capacity or permanent impairment, accounted for over 70% of the cost. Society bears the majority of workplace incident costs (54%) through welfare payments, taxation losses and compensation payments. The remaining costs are passed on to workers and employers<sup>1</sup>.

Workplace health and safety regulation is predominantly the responsibility of the Department of Employment and Industrial Relations (under the *Workplace Health and Safety Act 1995*) and the Department of Mines and Energy (under the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*). Other departments, such as the Department of Emergency Services and the Department of Transport, also administer legislation that affects workplace safety. Relevant legislation deals with maritime safety, rail safety, the transport, storage and handling of dangerous goods, electrical safety and radiation health. A description of the relevant health and safety agencies, and their statutory responsibilities is provided in section 2.2.

## 1.2 Methodology

The Review was overseen by a Steering Committee comprising:

- Chairman, Service Delivery and Performance Commission (SDPC), Chair
- Director-General, Department of Employment and Industrial Relations, and
- a senior executive from the Department of the Premier and Cabinet.

The Steering Committee met on three occasions and was responsible for influencing the direction of the Review and endorsing the recommendations arising from the Review.

A Senior Executive Reference Group was also established to advise the Review. This group comprised senior executives from the Department of Employment and Industrial Relations (Workplace Health and Safety Queensland and the Electrical Safety Office), Queensland Transport (Land Transport and Safety Division and Maritime Safety Queensland), the Department of Mines and Energy (Safety and Health), Department of Emergency (CHEM Services) and Queensland Health (Radiation Health).

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<sup>1</sup> Department of Employment and Industrial Relations, *Costs of Workplace Incidents in Queensland: 2005-2006 Update*.

Evidence collected for the Review included relevant legislation, memorandums of understanding between departments, coroners' reports, Queensland Ombudsman's reports, consultants' reports, departmental policies and guidelines, and data from Ministerial Councils, the departments and the Australian Bureau of Statistics. The Review also examined health and safety arrangements in other jurisdictions.

Stakeholder input was sought throughout the Review. Letters were written to key stakeholders (unions, industry peak bodies and individual companies) and government departments inviting submissions to the Review. Consultation meetings were also held with many of these stakeholders.

Newspaper advertisements were placed in the Brisbane and regional press inviting submissions to the Review.

The Review Team visited regional Queensland and various locations around Brisbane. The Review Team met with regional inspectors from Department of Employment and Industrial Relations, Queensland Transport and the Department of Mines and Energy.

The Review received a total of 20 submissions and held approximately 45 meetings.

The Steering Committee and Senior Executive Reference Group were provided with an opportunity to comment on the Review's findings and draft recommendations.

The Terms of Reference for the Review are provided at Appendix 1. It was not the purpose of the Review to assess how well departments are delivering WH&S services, nor to review the various WH&S Acts.

A Consultation List for the Review is provided at Appendix 2.

### **1.3 Identification of Issues**

The Review was initiated in response to concerns that multiple agencies and multiple regulatory frameworks may be compromising the government's ability to effectively administer workplace health and safety regulation to enhance protection in the workplace. To address the objectives of the Review, it was necessary for the Review to understand in detail the nature of the concerns with the current arrangements. These concerns were identified through meetings with the relevant agencies, written comments and submissions provided by these agencies, meetings and submissions with stakeholders, and other research undertaken by the Review Team.

Appendix 3 identifies the concerns presented to the Review. An analysis of these issues indicates they can be categorised into the following groupings:

- concerns that are unfounded (in whole or part) due to a misunderstanding of legislative responsibilities across government
- concerns that different forms of regulation in different parts of the state may indicate that some workers are not being as well protected as others (for example, mining safety and health legislation versus general workplace health and safety legislation)
- concerns that inspectorates may not have the required specialised skills (e.g. monitoring major hazard facilities in mines)

- multiple agencies and regulatory arrangements may apply to particular businesses (esp. large, complex high risk operations) and agencies may take different approaches to similar issues
- inspectorates located in departments that also promote the industry or own businesses in the industry they regulate are placed in a potential conflict of interest position
- concerns that there is a major gap in the area of maritime workplace health and safety
- national health and safety reforms may lead to reduced consistency at a state level, and
- scope for improved sharing of knowledge and skills between agencies.

This Review analysed these issues and, where relevant, makes recommendations for improvement.



## 2 Context

### 2.1 National Reforms

#### 2.1.1 Background

During the course of the Review, it became evident that there is likely to be substantial changes to how health and safety legislation is administered across Australia in the near future. Virtually all areas under review are subject to a national reform agenda. The pace of these reforms has accelerated markedly since the recent change of government at a national level.

The Queensland Government has identified working with the Commonwealth and other state and territory governments to improve consistency and collaboration on key policy and service delivery issues as a government priority.

A summary of these reform processes is provided below. A chronology of national review dates is provided in Appendix 4.

#### 2.1.2 Summary of national reforms

##### **Review of workplace health and safety legislation and administration**

At COAG's meeting of 26 March 2008, it was agreed that COAG's commitment to the national harmonisation of workplace health and safety would be reflected in an Intergovernmental Agreement by May 2008, with model legislation to be developed and submitted to the Workplace Relations Ministers' Council by September 2009.

At a meeting of the Workplace Relations Ministers' Council on 23 May 2008, the Ministers agreed in principle to the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*<sup>2</sup>. The IGA represents the first formal agreement between the Commonwealth, state and territory governments on the harmonisation of OHS legislation.

An independent advisory panel has been convened to conduct a national review into model occupational health and safety (OHS) laws and report to the Workplace Relations Ministers' Council on the optimal structure and content of a model OHS Act capable of being adopted in all jurisdictions. The panel will make its recommendations in two stages: matters concerning duties and offences by October 2008; and other matters such as scope and coverage, workplace consultation, and enforcement and compliance, by January 2009.

A Discussion Paper for the review was issued on 30 May 2008. A key consideration will be the scope and coverage of model OHS laws. In particular the review asks whether a model OHS Act should incorporate all industry specific safety legislation (e.g. mining safety) and whether industry specific issues could then be addressed in regulations, codes of practice or guidance material. As such, this review could have wide-ranging ramifications across health and safety regulation in Queensland.

##### **Chemicals and plastics**

In 2006, COAG established a high level taskforce to oversee an independent review of chemicals and plastics regulation. Subsequently, the Productivity Commission was

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<sup>2</sup> The Agreement was signed by Ministers on 3 July 2008.

requested to examine the current arrangements for the regulation of chemicals and plastics in Australia. The Productivity Commission's Draft Report identifies some areas of inconsistent approaches between the states and recommends governance frameworks to build national uniformity in policy development, assessment of chemical hazards, standard setting and administration and enforcement. A final report is expected by July 2008.

### **Electrical safety**

The Ministerial Council on Energy is considering a proposal to enhance the level of consistency of jurisdictions' energy networks technical and safety regulations, including occupational health and safety requirements.

In addition, COAG's Business Regulation and Competition Working Group has agreed in principle to the development of a national trade licensing system, subject to an intergovernmental agreement. This system may result in Queensland's electrical trade licence system being abolished in favour a single national electrician licence.

Work to progress a nationally consistent scheme for electrical equipment safety is also well advanced.

### **National mine safety framework**

The National Mine Safety Framework is an initiative of the Ministerial Council on Mineral and Petroleum Resources (MCMPR). Priorities include nationally consistent legislation, data sets and approaches to consultation. MCMPR's endorsement of final strategies, and the merits of establishing a national regulatory authority, are to be made to COAG by December 2008.

### **Upstream petroleum (oil and gas)**

In March 2008, COAG announced the commissioning of a Productivity Commission report on the regulation of crude oil and natural gas projects that involve more than one jurisdiction. A draft report is due to be presented to COAG in December 2008, and a final report in April 2009.

### **Explosives**

The Australian Forum of Explosives Regulators (AFER) is currently updating the Australian Explosives Code. Recommendations for endorsement by the Workplace Relations Minister's Council will be finalised by August 2008.

### **Dangerous goods and hazardous substances**

There are currently separate regulations dealing with 'dangerous goods' and 'hazardous substances'<sup>3</sup>. In line with international developments, a consolidated system of national standards and codes of practice for 'workplace hazardous chemicals' has been drafted by the Australian Safety and Compensation Council (ASCC). These revised standards will be adopted in all jurisdictions.

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<sup>3</sup> In general, substances that pose a health hazard to the people who are exposed to them are currently regulated as 'hazardous substances'. Goods that pose a physical hazard to people, property or the environment (for example, flammable, explosive or corrosive materials), are regulated as 'dangerous goods'. Many substances are both hazardous substances and dangerous goods.

## **Major hazard facilities (MHFs)<sup>4</sup>**

A review of the national MHF Standard and Code of Practice has recently commenced. The review is expected to create a two tier classification system for MHFs. This could potentially increase the number of Queensland facilities classified as MHFs from the current 32 to approximately 100.

## **Maritime safety regulation**

COAG has requested the Australian Transport Council (ATC) to investigate options for a single national approach to maritime safety regulation for commercial vessels by March 2009. A preferred approach, and the commissioning of detailed work to develop the approach, is to be established by November 2008.

## **Rail safety**

A review of rail safety regulation undertaken by the National Transport Commission (NTC) in 2004 led to the development of nationally consistent model legislation for the regulation of rail safety. At its March 2008 meeting, COAG agreed that all mainland jurisdictions will pass the model rail safety legislation by 31 December 2008. The Transport (Rail Safety) Bill 2008 has recently been introduced into the Queensland Parliament. The ATC is considering the establishment of a national rail regulator and national rail safety investigator.

## **Transport reforms**

In addition to the rail and maritime safety reforms, the NTC has also been engaged in road transport reform for many years. Key initiatives include nationally uniform heavy vehicle safety standards and registration charges, national arrangements for the carriage of dangerous goods and national road rules. The aim is to achieve increased national regulatory consistency, improved road safety and enhanced productivity. The ATC is considering a national system for regulation, registration and licensing of heavy vehicles.

## **Radiation safety**

All jurisdictions are moving towards national uniformity via processes detailed in the Australian Radiation Protection and Nuclear Safety Agency's National Directory for Radiation Protection.

### **2.1.3 Need for strengthened coordination**

Discussions with agency representatives indicate departments predominantly monitor and participate in the national context independently and from their particular department's viewpoint. Regulators do consult with their colleagues if they become aware that an issue has broader health and safety implications. However, the Senior Executive Reference Group for the Review noted problems can occur where a national agenda applies to a particular agency but there are less obvious implications for others. There are currently only limited mechanisms to consider matters across regulatory areas.

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<sup>4</sup> MHFs are locations such as oil refineries, chemical plants and large fuel and chemical storage sites where quantities of hazardous materials above prescribed threshold levels are stored, handled or processed.

There is a risk the current approach may strengthen alignment at a national level but lead to greater inconsistencies at a state level. There is a need for strengthened whole-of-government governance arrangements to ensure a consistent Queensland position is being presented at national negotiations.

It would not be possible for one agency to negotiate the above national health and safety reforms due to the breadth and complexity of the issues under review. There is, however, a pressing need for cooperative, coordinated input from state-based regulators into the national agenda to ensure there is a common understanding of the issues faced by the government, and that consistent, whole-of-government approaches are taken. While the Department of the Premier and Cabinet's Intergovernmental Unit coordinates material that relates to the COAG timetable, it does not look for the policy implications of approaches across regulators.

Given the greatly accelerated timetable and commitment to national reforms that now exists across the country, it will be critical for the Queensland Government to ensure that, within its own jurisdiction, there is alignment and consistency across all aspects of its health and safety regulation. Improved horizontal alignment across the Queensland Government will ensure that it is well positioned to respond to national issues. Communication between the different regulatory bodies across the Queensland Government will ensure the implications of prospective national moves can be planned for at the state level. Accordingly, it is important that each regulatory area has an awareness of both the broader national context as well as the specific implications for their area of responsibility.

The Review proposes this be achieved by establishing a Health and Safety Regulators Council with clear Terms of Reference to coordinate the government's input into the national reforms. The Council will report to Cabinet as required throughout the reform process. The Terms of Reference for the Council (Appendix 5) will also include strengthening other aspects of communication and coordination across health and safety regulators, which are identified elsewhere in the report.

#### **2.1.4 Recommendations**

1. Cabinet approve the creation of a Health and Safety Regulators Council, as soon as practical, to coordinate the government's response to the national health and safety reforms and to enhance other aspects of communication and coordination across health and safety regulators.
2. The Council to be chaired personally by the Director-General, Department of Employment and Industrial Relations, with the Chair to arrange an assessment of the effectiveness of the Council to be provided to the Public Service Commission by 30 June 2009.
3. Cabinet approve the Terms of Reference for the Council (Appendix 5).

## **2.2 Queensland Agencies**

### **2.2.1 Overview**

Only three Acts specifically and exclusively deal with workplace health and safety<sup>5</sup>. However, other Acts affect workplace health and safety to varying degrees through

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<sup>5</sup> The *Workplace Health and Safety Act 1995*, the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*.

broader legislative scope, for example, transport safety and community safety. Given that the health and safety of its citizens is a fundamental role of government, it should be expected that governments would have a range of Acts and regulations in place to deal with risks to the community. A summary of the agencies most involved in health and safety regulation that affect workplaces is outlined below.

### **Chemical Hazards and Emergency Management Services (CHEM Services) (DES)**

CHEM Services is responsible for coordinating the administration of the *Dangerous Goods Safety Management Act 2001* (DGSM Act), which establishes requirements for the safe storage, handling and manufacture of dangerous goods and combustible liquids. Several memorandums of understanding between DES and other Queensland Government departments (DEIR, DME), and external organisations (e.g. local governments) delegate powers and devolve authorities for the regulatory implementation of the DGSM Act. Appendix 6 provides an overview of the regulatory jurisdictions for dangerous goods administration. CHEM Services maintains primary responsibility for auditing and assessing the safety management systems of major hazard facilities, as they pose a significant risk to persons, property and the environment in the event of an emergency.

### **Electrical Safety Office (DEIR)**

The Electrical Safety Office administers the *Electrical Safety Act 2002* which establishes the legislative framework for electrical safety from generation to point of use and applies across the vast majority of Queensland homes, workplaces and other environments. Electrical safety inspectors deliver inspection, advisory and enforcement activities to ensure compliance with the legislation. ESO also has a community electrical safety mandate and promotes electrical safety in the general community through public advertising and education programs. The *Electrical Safety Act 2002* was a key component of the Queensland Government's reform package to address Queensland's poor electrical safety record and respond to criticism from the Queensland Ombudsman and independent reviewers.

### **Explosives Inspectorate (DME)**

The Explosive Inspectorate administers the *Explosives Act 1999*, which can be described as 'cradle to grave' explosive safety and security legislation. It encompasses all aspects of handling explosives, including moving explosives in or out of the state, possessing, manufacturing, transporting, storing, selling and using explosives. The Explosive Inspectorate also regulates security sensitive ammonium nitrates (SSAN), in accordance with COAG's agreed principles.

### **Maritime Safety Queensland (MSQ) (QT)**

Maritime Safety Queensland (MSQ) administers the *Transport Operations (Marine Safety) Act 1995* and the *Transport Operations (Marine Pollution) Act 1994*. MSQ's areas of interest include safe vessel design and operation, safety of vessel movement and mooring, and safety of the environment through the pollution prevention and emergency response. The vast majority of registered vessels are non-workplace recreational vessels. Only 4% of the regulated fleet is commercial.

### **Mines Inspectorate (DME)**

The Mines Inspectorate administers the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*, which apply to Queensland's 700 mines. The Mines Inspectorate, located in Brisbane and mining and quarrying regions, inspects and audits mines and ensures safety management systems are in place in larger mines to control risks. Consistent with the recommendations of a recent review, inspectors with non-mining occupational health and safety skills have recently been employed to broaden the inspectorate's focus.

### **Petroleum and Gas Inspectorate (DME)**

The Petroleum and Gas Inspectorate administers the safety and health components of the *Petroleum and Gas (Production and Safety) Act 2004*. In line with the broad legislative framework, the inspectorate is concerned with a range of industry participants across exploration, production, transmission, distribution, LPG storage and distribution, and downstream use in commercial, industrial and domestic environments. The inspectorate also administers the safety provisions of the legislation as they apply to geothermal explorations.

### **Radiation Health (Queensland Health)**

Radiation Health administers the *Radiation Safety Act 1999* and has policy, licensing and legislative responsibility for radiation health standards and radiation safety. Radiation Health provides scientific and technical advice to all Queenslanders on all ionising and non-ionising radiation safety matters in the interest of minimising health risks and protecting the environment.

### **Rail Safety (QT)**

Rail Safety administer the rail safety provisions of the *Transport Infrastructure Act 1994* and is primarily concerned with the safety of railway operations. Rail safety officers are involved in the accreditation of railway operators and ongoing review and monitoring of their safety management systems. Because rail operators work across state jurisdictions, Rail Safety often participates in national audit programs. New rail safety legislation, the *Transport (Rail Safety) Bill 2008*, has been introduced into the Queensland Parliament.

Rail Safety is regulated through a co-regulatory approach with responsibilities shared between industry participants, industry associations and government. Rail Safety Officers' role is to work with industry to improve the safe carrying out of railway operations, through managing and controlling the risks associated with railway operations.

### **Road Transport Safety (QT)**

Road Transport Safety administers the *Transport Operations (Road Use Management) Act 1995* and its associated regulations, covering areas such as the transportation of dangerous goods; fatigue management; mass, dimensions and loads; and vehicle standards and safety. Queensland Transport is the lead agency for road safety but the road safety program is jointly progressed across Queensland Transport, the Queensland Police Service, the Department of Main Roads and the Department of Justice and Attorney-General.

## Workplace Health and Safety Queensland (DEIR)

Workplace Health and Safety Queensland (WHSQ) administers the *Workplace Health and Safety Act 1995*, which applies to the vast majority of Queensland's workplaces, employers, self-employed persons and workers. The Act requires obligation holders (e.g. a person who conducts a business or undertaking) to manage the broad range of health and safety risks which may arise from workplaces and workplace activities. WHSQ's statewide inspectorate comes from various technical disciplines, such as occupational hygiene, ergonomics, construction, plant and machinery, diving and psychology.

A detailed description of the each agency and the legislation they administer is provided in Appendix 7.

### 2.2.2 Current staffing

Over 1400 people are employed by the above health and safety regulatory agencies in Queensland. WHSQ is the largest organisation with 426 staff. It regulates the safety of workers in all businesses in Queensland, other than mines. While Maritime Safety Queensland is also large (403 staff), commercial vessels are only around 4% of the regulated fleet, so most of their effort is directed towards recreational vessels. Road Safety has a wide scope in relation to safe vehicle operation, irrespective of whether the vehicle is a workplace or not. Similarly, the Electrical Safety Office regulates electrical safety in all domestic, workplace and other environments throughout Queensland. The remaining agencies have more targeted roles with a relatively small number of industry participants. It was not the purpose of the Review to assess the adequacy or otherwise of the number of staff in the inspectorates.

**Table 2.1: Full-Time Equivalent and Inspector Positions by Organisation**

Organisation	FTEs	Inspectors
CHEM Services	10	8
Electrical Safety Office	75	32
Explosives Inspectorate	46	16
Maritime Safety Queensland	403	24
Mining Inspectorate	52	44
Petroleum and Gas Inspectorate	16	12
Radiation Health	16	10
Rail Safety Unit	32	11
Road Transport Safety	330*	170**
WHSQ	426	229

Source: Information provided by relevant regulatory agencies.

Notes: \* FTEs for Land Transport and Safety Division, not just Road Transport Safety.

\*\* The 170 inspectors are employed in Queensland Transport's Services Division and are in addition to the 330 FTEs employed by Land Transport and Safety.

### **2.2.3 Differences and similarities**

The above description highlights the difficulties in defining the Queensland Government's 'workplace health and safety' agencies. Some agencies' resources, such as WHSQ, are mainly focused on workplaces or workplace activities; whereas others, such as the Explosives Inspectorate and the Electrical Safety Office, move across workplace, domestic and public environments. Several, for example CHEM Services, Maritime Safety Queensland and Radiation Health, also play a vital environmental protection role.

Even within the workplace health and safety domain there are significant differences in regulatory approaches. This is influenced by the legislative framework being administered, the maturity and type of businesses being regulated, and the types of risks present. For example, WHSQ regulates all types of workplaces including small businesses and the self-employed, who typically have lower awareness of health and safety requirements. Other regulators, such as the major hazard facilities inspectors, primarily interact with larger companies, whose risks are better described as low risk/high consequence, and who are legislatively required to maintain safety management systems. In combination, these factors have a direct influence on the monitoring, auditing and enforcement strategies adopted by each regulator.

Each agency maintains distinct regulatory scopes of interest. Most inspectorates employ inspectors with a particular industry or hazard specific knowledge and expertise. During the Review, both worker and employer representative stakeholders impressed the need for inspectors to have direct experience in the industry they regulate and maintain an understanding of the industry, its hazards and appropriate risk controls. Stakeholders consider this specialist technical knowledge vital to building a credible and effective regulatory regime. However, there is also a growing recognition of the need for the various health and safety inspectorates to be able to respond to the modern workplace environment and new and emerging workplace health and psychosocial risks, such as fatigue.

Queensland Government agencies with health and safety roles and responsibilities are not a homogenous group. The dynamic and complex context in which they operate affects and moulds their regulatory approach. The Review is cognisant of these important differences when considering the most effective and efficient arrangements for the administration of the Queensland Government's workplace health and safety responsibilities.

## **2.3 *How safe are Queensland Workplaces?***

### **2.3.1 General workplace health and safety**

In February 2008, the Workplace Relations Ministers' Council (WRMC) released the ninth edition of the Comparative Performance Monitoring Report, which provides trends analysis on the occupational health and safety and workers' compensation schemes operating in Australia and New Zealand.

At the time of publication, 231 workers compensation claims were lodged in 2005–2006 for work-related fatalities in Australia, including deaths from injury and musculoskeletal disorders, mesothelioma and asbestosis. Queensland accounted for 61 of those claims (26%).



Table 2.2 shows there was little change in the annual number of compensated fatalities in Queensland in the four years to June 2005. In contrast, the number of fatalities nationally fell by 26.9%<sup>6</sup>.

**Table 2.2: Compensated Fatalities 2001–2002 to 2004–2005 – Queensland and Australia**

Cause	2001–2002		2002–2003		2003–2004		2004–2005	
	Qld	Aust.	Qld	Aust.	Qld	Aust.	Qld	Aust.
Injury and musculoskeletal disorders	44	207	48	197	38	173	44	175
Mesothelioma and asbestosis	30	43	33	48	34	41	31	41
Other diseases	6	66	10	64	8	63	9	38
<b>Total</b>	<b>80</b>	<b>316</b>	<b>91</b>	<b>309</b>	<b>80</b>	<b>277</b>	<b>84</b>	<b>231</b>

Source: *Comparative Performance Monitoring 2005–2006: Comparison of occupational health and safety and workers' compensation schemes in Australia and New Zealand, 9th Ed., February 2008, p. 10.*

A comparison of Queensland and Australian rates of serious compensated injury is outlined in the Table 2.3. It shows national rates of serious compensated injury have fallen by 12.7% since the base period (2000–2001 to 2002–2003), while Queensland's incidence rates for compensated injury and musculoskeletal claims has decreased by a modest 4.1%. In 2005–2006, Queensland's rate of compensated injury and musculoskeletal claims is projected to be 16.4 claims per 1000 employees, well above the Australia-wide rate of 13.8 claims per 1000 employees. Considerable effort will be required if Australia and Queensland are to achieve the 40% reduction in the incidence rate of injury and musculoskeletal claims by 2012 as agreed under the *National Occupational Health and Safety Strategy 2002–2012*.

A variety of reasons were suggested by DEIR to explain Queensland's higher rate of injury claims including:

- the quality of data reported by jurisdictions is variable
- the 'fax fee' scheme by WorkCover introduced in July 2006 streamlines workers' compensation applications which increases the number of claims (this could not explain the trends to date as the reported data is only to 2005–2006)
- the Queensland workers' compensation scheme is more generous than some other schemes (lower premiums charged and higher benefits paid to injured workers) which encourages more claims, and
- Queensland has a relatively larger number of new workers entering the workforce (research indicates that less experienced workers have a greater propensity to get injured in the workplace).

<sup>6</sup> The report notes data limitations, most notably under-reporting and that the data reflects the injury experiences of employees only. However workers compensation figures still provide a good indication of health and safety trends.

**Table 2.3: Incidence Rates (Claims per 1000 Employees) and Percentage Improvement of Serious Compensated Injury and Musculoskeletal Claims by Jurisdiction**

Jurisdiction	Base period	2002–03	2003–04	2004–05	2005–06 preliminary	2005–06 projected	Percentage improvement (%)**
New South Wales	19.0	18.2	17.5	16.8	14.3	14.7	22.6
Australian Government	9.5	9.5	9.8	9.0	7.7	8.1	14.7
Seacare	35.6	31.8	35.2	21.4	30.0	30.6	14.0
South Australia	18.8	17.9	18.3	17.8	15.6	16.2	13.8
Victoria	12.1	10.9	10.8	10.2	10.7	11.1	8.3
Queensland	17.1	17.6	16.3	15.8	15.9	16.4	4.1
Western Australia	12.9	13.2	13.5	13.5	12.2	12.5	3.1
Tasmania	16.4	16.4	15.8	16.1	15.6	16.1	1.8
Northern Territory	13.3	12.8	13.0	13.4	13.0	13.3	0.0
Australian Capital Territory	13.7	15.0	16.9	14.1	13.7	14.2	-3.6
<b>Australia</b>	<b>15.8</b>	<b>15.3</b>	<b>15.0</b>	<b>14.4</b>	<b>13.4</b>	<b>13.8</b>	<b>12.7</b>

Source: *Comparative Performance Monitoring 2005–2006: Comparison of occupational health and safety and workers' compensation schemes in Australia and New Zealand, 9th Ed., February 2008, pp.3–5.*

The Australian Bureau of Statistics (ABS) collects information about work-related injury and illness through its multi-purpose household survey<sup>7</sup>. As the ABS injury data is based on surveys rather than claims, it provides a sound indicator of actual injury rates and the most reliable indicator of relative injury rates between jurisdictions. In 2005–2006, the survey found that for every 1000 people who had worked in Australia in the past 12 months, 64 people experienced a work-related injury or illness. Queensland had the highest work-related injury/illness rate at 71 per 1000 people.

The Review was advised DEIR intends to engage an independent consultant to analyse Queensland's workers' compensation and ABS injury data.

### 2.3.2 Electrical safety

Analysis of Queensland's electrical fatalities from the last 30 years shows a significant downward trend. It is likely a number of factors contributed to this outcome including improvements in equipment design, industry training and shifting attitudes in relation to electrical safety. Implementation of a series of legislative and administrative changes since 2001 has coincided with a marked improvement of Queensland's electrical safety record. Using the five year moving average to measure electrical fatalities, Queensland's fatality rate fell from 3.58 per million at June 2001 to 1.01 per million at June 2007. Comparative national figures for the same period were 2.5 electrical fatalities per million down to 1.96 per million.

### 2.3.3 Mine safety

DME advise that Queensland has one of the best mine safety records in the world as evidenced by the lowest lost time injury and fatality frequency rate. The Review obtained information from a number of sources on mining fatalities, which show data

<sup>7</sup> Australian Bureau of Statistics, *Work-Related Injuries, Cat. No. 6324.0*.

consistent with DME's claim. Coal mining fatalities range from 0.009 per million tonnes of coal mined in Australia, 0.034 in USA and four in China. Last year, 3786 miners died in China, 33 in the United States, 99 in India, 48 in South Africa and, while not the total, 170 miners died in two accidents in Russia.

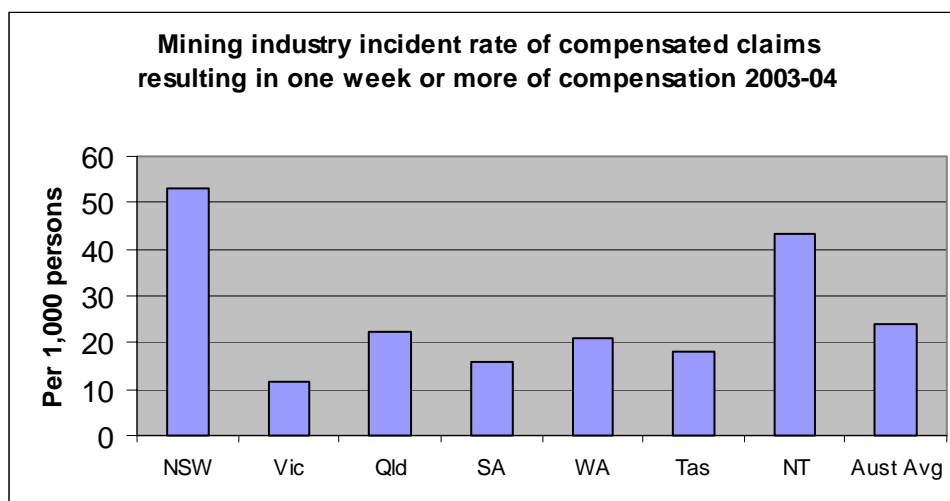
The Queensland Ombudsman compared fatality data from Western Australia, NSW and Queensland as shown in Table 2.4. He concluded the numbers are subject to one-off spikes and was unable to make any conclusions about the superiority of any particular state's mine safety regulatory practices.

**Table 2.4: Mining Fatalities per Million Hours Worked – QLD, NSW and WA**

	QLD	NSW	WA	National Average
<b>Average</b>	<b>0.04</b>	<b>0.09</b>	<b>0.04</b>	<b>0.05</b>
2005–2006	0.04	0.00	0.04	0.04
2004–2005	0.06	0.03	0.02	0.05
2003–2004	0.02	0.12	0.04	0.06
2002–2003	0.05	0.03	0.06	0.03
2001–2002	0.04	0.06	0.03	0.08
2000–2001	0.04	0.13	0.06	0.09
1999–2000	0.04	0.31	0.07	0.05

Source: *The Regulation of Mine Safety in Queensland – A Review of the Queensland Mines Inspectorate, June 2008, p. 100.*

The most recent *Comparative Performance Monitoring Report* does not include mining industry data by jurisdiction. However, the Seventh Report (November 2005) details the incidence of claims per 1000 employees resulting in one week or more of compensation across Australian jurisdictions during the 2003–2004 financial year. Queensland recorded an incidence rate of 22.4, slightly below the Australian average of 24.2.

**Figure 1: Compensated Mining Industry Claims 2003–2004 – Queensland and Australia**

Source: *Comparative Performance Monitoring Report, Seventh Report, November 2005*, p.129

The National Mine Safety Framework is establishing a national data set that will include measures of fatality and injury, corrective actions issued, and positive safety performance indicators such as number of persons gaining safety competencies through training.

### 2.3.4 Rail safety

Queensland Transport is signatory to a memorandum of understanding between the Australian Transport Safety Bureau (ATSB) and other rail safety regulators to contribute data to the National Rail Occurrence Database published on the ATSB website. A comparison of key performance measures for 2006–2007 is below. Each measure is defined in the national Standard No. ON-S1 – Occurrence Categories and Definitions. ‘Railway occurrences’ involving employees, contractors, passengers and members of the public are included. Fatalities and serious injuries occurring in repair shops and not involving a train in motion are not defined as ‘railway occurrences’ and are therefore not included. As such, this data is not intended to represent all workplace health and safety injuries and fatalities in the rail sector.

**Table 2.5: Rail Safety Indicators 2006–2007 – Queensland and Australia**

Measure	QLD		Aust	
Fatalities (total number)	4		46	
Serious injuries (total number)	7		186	
Level crossing incidents involving vehicles*	July–Dec	0.69	July–Dec	0.48
	Jan–June	0.37	Jan–June	0.35
Level crossing incidents involving persons*	July–Dec	0.10	July–Dec	0.04
	Jan–June	0.00	Jan–June	0.06

Source: *Australian Rail Safety Occurrence Data, January 2001 to December 2007*, May 2008, pp. 3, 10 & 11.

Note: \* Normalised rate per million train km travelled.

### 2.3.5 Maritime safety

A summary of Australian and Queensland marine fatality and serious incident reports for the 2006 calendar year is outlined below.

**Table 2.6: Maritime Safety Indicators 2006 – Queensland and Australia**

Incident type	Australia *	Queensland **
Fatalities	<ul style="list-style-type: none"> <li>45 reported fatalities</li> <li>10 involved commercial vessels</li> </ul>	<ul style="list-style-type: none"> <li>17 reported fatalities</li> <li>6 involved commercial vessels</li> <li>5 of the 6 involved commercial fishing vessels</li> </ul>
Serious injuries	<ul style="list-style-type: none"> <li>162 reported serious injuries</li> <li>44 (28%) reported serious injuries involved commercial vessels</li> </ul>	<ul style="list-style-type: none"> <li>33 reported incidents resulting in 36 serious injuries</li> <li>24 of the 33 (75%) incidents involved commercial vessels.</li> </ul>

Sources: \* *National Marine Safety Committee, Incident Data Analysis 2005–2006*  
 \*\* *Marine Incidents in Queensland 2006, June 2007, pp. 10, 12, & 37.*

### 2.3.6 Conclusion

Workplace fatalities, serious injuries and illnesses impose significant human and financial costs on injured workers and their families, employers, the wider community and the Queensland economy. Fatalities and serious injuries in Queensland workplaces are an unacceptable and generally avoidable outcome. Regulators, industry and workers must continue to work together and build on the significant progress that has been made in recent years to reduce incident rates.

Data indicates Queensland still has the highest recorded injury rate in Australia, although jurisdictional differences cloud the extent to which injury rates are comparable. Queensland's mine and rail related outcomes are consistent with national figures. Considerable effort will be required if Queensland is to achieve the national target of a 40% reduction in the incidence rate of injury and musculoskeletal claims by 2012. The fatality and serious injury outcomes being experienced in the commercial shipping and commercial fishing industries require attention.

## 3 Legislative Framework

### 3.1 Background

The safety of workers and workplaces in Queensland is regulated by several Acts. As indicated in section 2.2, some Acts, such as the *Workplace Health and Safety Act 1995* and the *Coal Mining Safety and Health Act 1999*, seek to directly ensure a safe environment for workers. Other Acts, such as the *Dangerous Goods Safety Management Act 2001*, seek to manage specific risks in the community and in doing so provide a safer environment for workers.

The legislation that has the greatest impact on workplace safety in Queensland is listed below in alphabetical order:

- *Coal Mining Safety and Health Act 1999*
- *Dangerous Goods Safety Management Act 2001*
- *Electrical Safety Act 2002*
- *Explosives Act 1999*
- *Mining and Quarrying Safety and Health Act 1999*
- *Petroleum and Gas (Production and Safety) Act 2004 (Chapter 9: Safety)*<sup>8</sup>
- *Radiation Safety Act 1999*
- *Transport Infrastructure Act 1994*
- Transport Infrastructure (Dangerous Goods by Rail) Regulation 2002
- Transport Operations (Road Use Management) Act 1995
- Transport Operations (Road Use Management—Dangerous Goods) Regulation 1998
- Transport Operations (Road Use Management—Fatigue Management) Regulation 1998
- *Transport Operations (Marine Safety) Act 1994*, and
- *Workplace Health and Safety Act 1995*.

While rail safety is currently regulated by the *Transport Infrastructure Act 1994*, the *Transport (Rail Safety) Bill 2008* is currently before Parliament. Given the forward looking nature of this Review, SDPC will consider this Bill when analysing the worker safety framework.

Some businesses in Queensland are also covered by the Comcare system under the *Commonwealth's Safety, Rehabilitation and Compensation Act 1988*. This Act, which was originally set up to provide compensation for injured workers in the Commonwealth public sector, has been used to extend coverage of the Commonwealth's Comcare workers compensation system to some private sector corporations. Corporations licensed to self-insure under the Commonwealth's Comcare scheme are now effectively excluded from the application of state and territory workplace health and safety laws.

<sup>8</sup> The *Geothermal Exploration Act 2004* also applies the safety provisions in the *Petroleum and Gas (Production and Safety) Act 2004* to geothermal exploration.

## 3.2 Regulatory Approach

It is evident from an analysis of the legislation that the Acts take different approaches to regulating health and safety. While this may be due to the different nature of the industries being regulated, it could also result from the different culture/approaches of the regulatory agencies and the circumstances at the time the legislation was developed. Some of the key differences relate to:

- the nature of the duties imposed and to whom they apply
- how the duty may be met, including available defences
- incident reporting requirements, including the definition of injury
- the use of safety management systems (by whatever name), and
- inquiry powers.

### 3.2.1 The nature of the duty imposed

The *Workplace and Safety and Health Act 1995* imposes the highest duty in relation to workplaces. The duty is to ensure the workplace health and safety of workers. In practice, this means in the event of an injury, the employer must demonstrate the steps taken to make the workplace safe, including complying with legislative standards/codes.

The *Electrical Safety Act 2002* requires employers to ensure electrical safety and that workers are free from electrical risk. The Act requires the risk to be as low as reasonably achievable having regard to the likelihood of harm and the likely severity of the harm.

The *Coal Mining Safety and Health Act 1999*, the *Dangerous Goods Safety Management Act 2001*, the *Mining and Quarrying Safety and Health Act 1999* and the *Petroleum and Gas (Production and Safety) Act 2004* use the concept of an acceptable level of risk. An acceptable level of risk is one where the level of risk from the operations is within acceptable limits and as low as reasonably achievable. To decide whether risk is within acceptable limits and as low as reasonably achievable, regard must be had to the likelihood of injury or illness to a person arising out of the risk and the severity of the injury or illness.

The *Transport (Rail Safety) Bill 2008* seeks to ensure, so far as is reasonably practicable, rail safety is not affected by the carrying out of prescribed railway operations.

The *Transport Operations (Marine Safety) Act 1994* and the *Transport Operations (Road Use Management) Act 1995* seek to find the balance between safety and cost.

The *Explosives Act 1999* uses the approach of 'reasonable caution' and 'reasonable care', while the *Radiation Safety Act 1999* requires specified persons to take reasonable steps to ensure a person's health and safety.

It is not apparent why different duties apply under the various Acts, particularly where it directly relates to worker safety. This is most evident in comparing the duties under the *Workplace Health and Safety Act 1995* with those that apply to workers in the petroleum, gas and mining sectors. The legislative references to 'balancing safety and cost' in the above-mentioned transport Acts are unlikely to reflect a contemporary approach to safety were these Acts to be re-enacted now.

### 3.2.2 To whom the duty applies

The Acts are consistent in placing the duty on a number of parties whose activities may affect safety and health. For typical workplaces, the primary duty is placed on business owner/operators but extends to manufacturers and suppliers (e.g. of plant or substances). For construction work, for example, the duty extends to clients, designers of structures, project managers and the principal contractors.

For mineral, gas and petroleum production, the duty applies to everyone who may affect the health and safety of persons at the mine or production facility. For major hazard facilities under the *Dangerous Goods Safety Management Act 2001*, this duty applies to the occupier of the facility, the designers, manufacturers, importers and suppliers of the vessels in which the dangerous goods are stored, as well as to the manufacturers, importers and suppliers of the dangerous goods themselves.

Assigning a duty to the party best placed to manage the risk is a sound approach. Each party needs to be able to rely on all other parties diligently executing their duty.

### 3.2.3 How the duty may be met

There are a number of approaches to meeting the duty prescribed in the legislation.

Under the Rail Safety Bill, a rail transport operator discharges the duty by meeting the requirements specified in the Act. These requirements include the development of safe working systems, ensuring workers are in sufficient good health and fitness, ensuring drug and alcohol management, and providing adequate training. The Bill also requires rail transport operators to have a safety management system.

Under the mining Acts, a person fulfils their obligations by complying with a regulation (which is mandatory), a guideline issued by the Minister (if a person does not follow a guideline they must adopt measures equal to or greater than those in the guideline), or take other reasonable measures (where no regulation or guideline exists). The regulation under the Act specifies the requirements to identify hazards and manage risks at a mine, as well as detailing specific requirements for matters such as responding to accidents, electrical safety, emergency planning and the storage and handling of dangerous goods and hazardous substances.

A similar model is adopted under the *Workplace Health and Safety Act 1995*, whereby a person's duty can be discharged by complying with a regulation or Ministerial notice (which is mandatory). If a code of practice exists, a person must comply with the code or adopt another measure that provides the same level of protection.

Under the *Electrical Safety Act 2002*, a person's duty is met by meeting their obligations under the Act and by complying with prescribed regulations and Ministerial notices. If a code of practice exists a person must not contravene or act inconsistently with the code, and must implement measures as effective, or more effective than the code.

For MHFs and dangerous goods locations, the occupier must, as far as reasonably practicable, implement measures to minimise the likelihood of a major accident at the facility and to limit the consequences of any major accident that may happen at the facility.



### 3.2.4 Safety management systems

Complex operations, such as MHFs or mines, have inter-related risks. In these instances, where an array of risks need to be managed, the legislation provides for Safety Management Systems (various names are used in different Acts).

A Safety Management System (SMS) is a system which incorporates policies and practices to deal with all risks present in an operation, but does so in a way that addresses the risks as inter-related rather than independent components. The objective of the SMS is to ensure the safety and health of workers, other persons on the site, and anybody who may be affected by the business's operations. SMSs are auditable documented systems. The SMS should state how the operator intends to measure, monitor and evaluate the performance of the system, and how risks that are not consistent with the system will be rectified. The SMS should be reviewed and amended periodically.

An SMS for a contained activity such as a mine would be limited to the mine site. For an MHF, where the impact of an incident may extend beyond the boundaries of the facility, the plan would include emergency management procedures for the impact footprint of any potential incident.

SMSs (under a variety of names) are prescribed by the *Coal Mining Safety and Health Act 1999*, the *Dangerous Goods Safety Management Act 2001*, the *Electrical Safety Act 2002* (for prescribed electrical entities), the *Mining and Quarrying Safety and Health Act 1999* (for mines with more than ten workers), the *Petroleum and Gas (Production and Safety) Act 2004*, the *Radiation Safety Act 1999* and the *Transport (Rail Safety Bill) 2008*.

There are no specific provisions dealing with SMSs under the *Workplace Health and Safety Act 1995*, although the Act specifies how a person should manage exposure to risks where this is not prescribed in a regulation, a Ministerial notice or a code of practice. Managing exposures to risks involves identifying hazards, assessing risks resulting from the hazards, deciding and implementing control measures, and monitor the effectiveness of the measures. This is the broadly similar model that applies in SMSs.

### 3.2.5 Incident reporting requirements

Each Act has its particular incident notification/reporting requirements as outlined in Table 3.1.

**Table 3.1: Summary of Incident Reporting Requirements**

Act	Incidents triggering notification requirements
<i>Coal Mining Safety and Health Act 1999</i>	Serious accident at a coal mine resulting in a person receiving a bodily injury, endangering or likely to endanger, the person's life; or an injury causing, or likely to cause, a permanent injury to the person's health; or a high potential incident. A high potential incident at a mine is an event that causes or has the potential to cause a significant adverse effect on the safety or health of a person.

Act	Incidents triggering notification requirements
<i>Dangerous Goods Safety Management Act 2001</i>	Major accident, i.e. a sudden occurrence (including, in particular, a major emission, loss of containment, fire, explosion or release of energy) leading to serious danger or serious harm to persons, property or the environment.
<i>Explosives Act 1999</i>	An explosive is, or appears to have been, lost or stolen; or there is an accidental explosion, fire or spillage; or a person dies or is injured; or there is unexpected damage to property; or there is an event, including a misfire, with the potential to cause any of the previous incidents.
<i>Electrical Safety Act 2002</i>	An incident involving electrical equipment where a person is killed by electricity; receives a shock or injury from electricity, and is treated for the shock or injury; or a person receives a shock or injury from electricity at high voltage; or a dangerous electrical event which is broadly defined.
<i>Mining and Quarrying Safety and Health Act 1999</i>	A serious accident at a mine that causes the death of a person; or a person to be admitted to a hospital for treatment for the injury; or a high potential incident.
<i>Petroleum and Gas (Production and Safety) Act 2004</i>	An injury requiring medical treatment and any incidents that would be reportable to WHSQ if the <i>Workplace Health and Safety Act 1995</i> applied.
<i>Radiation Safety Act 1999</i>	A radiation source is, or appears to have been, lost or stolen; there is a radiation incident in relation to the source; equipment that uses, measures or controls radiation emitted from the source malfunctions with the result, or likely result, that there will be an unintended emission of the radiation or a person will be unintentionally exposed to the radiation.
<i>Transport (Rail Safety) Bill 2008</i>	An accident or incident associated with railway operations that has caused, or could have caused, significant property damage; or serious injury; or death <sup>9</sup> .
<i>Transport Operations (Marine Safety) Act 1994</i>	An event causing or involving the loss of a person from a ship; or the death of, or grievous bodily harm to, a person caused by a ship's operations.
<i>Transport Operations (Road Use Management) Act 1995</i>	Numerous notification requirements. Most significantly, the police must be immediately notified of a traffic incident where a person is injured.
<i>Workplace Health and Safety Act 1995</i>	Any incident resulting in a person suffering a work injury; or a work caused illness; or an incident resulting in a dangerous event.

<sup>9</sup> The Bill will set out the detailed requirements for reporting notifiable occurrences. This is supported by subordinate legislation to the national Occurrence Notification – Standard 1 which clearly sets out the data to be provided by rail transport operators to the rail safety regulator for each notifiable occurrence.

The Review considered whether there should be a single reporting point for all health and safety issues. This is already the case for the vast majority of Queensland businesses who deal with only WHSQ, or ESO for electrical incidents – both of whom are in the same department. Those businesses which deal with multiple regulators are typically sophisticated and aware of their reporting obligations and reasons for the reporting arrangement. For example, QR reports all worker injuries to DEIR and all rail operation incidents to the Rail Safety Unit. In the event of a rail operation incident which results in an injury to a worker, QR reports the incident to both agencies.

However, for large, complex high risk businesses, the reporting obligations may not be as clear and multiple reporting may be required for the one incident. Businesses in the chemical and gas industries, including major hazard facilities, were often cited to the Review as an area where this may occur.

The Review considers the current incident notification system should be enhanced so businesses have to report health and safety incidents only once. For example, if there was an incident at a MHF which required both WHSQ and CHEM Services to be notified, administrative arrangements should be in place so the business needs to contact only one organisation. Once the incident has been reported, the business should be confident that the agency receiving the report will inform all relevant regulators.

This is not to say all health and safety incidents should be reported to the same entity, as this would only add an extra communication step, and associated costs, for all notifications. However, for a particular type of incident (e.g. chemical leak, electrical safety, rail operations incident), a business should know who to report the incident to – and need only do this once. The relevant regulator must advise other regulators as needed.

This proposal will require changes to administrative arrangements, such as delegations, so businesses would be meeting their statutory obligations by only reporting once.

### **3.2.6 Formal inquiry powers**

A number of the Acts have provisions enabling the relevant Minister to establish formal inquiries as a result of a serious incident. The purpose of these inquiries is to establish the factual circumstances that led to the incident, rather than seeking to find a guilty party. These inquiries can be effective in preventing similar situations occurring in the future.

Formal inquiry powers are found in the mining safety Acts, the *Dangerous Goods Safety Management Act 2001*, the *Explosives Act 1999*, the *Petroleum and Gas (Production and Safety) Act 2004*, the *Transport (Rail Safety) Bill 2008*, the *Transport Operations (Marine Safety) Act 1994* and the *Workplace Health and Safety Act 1995*.

A major difference in the various Acts relates to the self-incrimination defence. Some Acts enable this defence to be used as a basis for refusing to answer a question, while others do not allow this defence but guarantee the information obtained can not be used against the person. The latter model is a similar to the approach now used under the *Coroners Act 2003*. There is no evident reason why some Acts allow this defence, while others do not.

### 3.2.7 Conclusion

The above issues will be examined as part of the various national reforms referred to in section 3.1. As part of the reform process, health and safety regulators should seek common approaches where this is feasible. The Review proposes this role be performed by the Health and Safety Regulators Council.

### 3.2.8 Recommendations

3. In negotiating the national health and safety reforms, the Health and Safety Regulators where appropriate, Council develop standardised approaches to key equivalent legislative provisions for Cabinet approval, including:
  - the statutory health and safety duties
  - how the statutory duties are to be met
  - use of safety management systems
  - incident reporting requirements, and
  - formal inquiry powers.
4. The Health and Safety Regulators Council develop administrative arrangements, and accompanying information material, by 31 March 2009 to streamline health and safety incident reporting requirements for businesses, as follows:
  - a business need only report a particular type of incident (e.g. chemical leak, electrical safety, rail operations incident) to one government regulator
  - the relevant regulator to refer the incident to other regulators as needed, and
  - the business would meet its statutory obligations by reporting the incident once.

## 3.3 Relationship between the Health and Safety Acts

For businesses that need to comply with more than one piece of legislation, an understanding of the relationship between the various Acts is important. In some cases, the relationship is clear. For example, the *Workplace Health and Safety Act 1995* does not apply to coal and other mining operations.

However, in other instances, the relationship is qualified in a generalised way. Examples of this include:

- under the *Petroleum and Gas (Production and Safety) Act 2004*, the requirement for Safety Management Plans applies to MHFs *only to the extent* that the *Dangerous Goods Safety Management Act 2001* does not apply, and
- the Transport (Rail Safety) Bill does not apply *to the extent that* the *Electrical Safety Act 2002* applies.

These types of qualifications are most evident in the dangerous goods safety management legislation, the explosives legislation and the Rail Safety Bill. A summary of the relationships between the various Acts is provided in Appendix 8.

The fact that the various Acts do not specify their precise relationship means, in effect, that the businesses being regulated must decide this for themselves. Failure to do this accurately may result in a business being in breach of the legislation.

As the provisions of the various Acts and regulations are known, it is open to the regulatory agencies to specify the precise nature of the relationship between the Acts. This should be supported by clear information material to business as to how they should comply with multiple Acts, including incident notification. This material should focus on specific industries where the impact of overlapping legislation is most significant. Industries most cited to the Review are those handle dangerous goods such as the chemical, plastics, gas, petroleum and explosive industries. This information needs to be made available to the various departmental call centres and on the internet.

### **3.3.1 Recommendations**

5. The Health and Safety Regulators Council develop proposals to amend the relevant health and safety Acts to remove areas of ambiguity between the Acts (as identified in Appendix 8) for Cabinet consideration by 31 December 2008.
6. The Health and Safety Regulators Council identify industries where the impact of overlapping legislation is most significant (e.g. chemicals and plastics) and develop information material on their compliance responsibilities by 31 March 2009.

### **3.4 Gaps in Administering Health and Safety Legislation**

While the Review sought to identify areas of overlap and duplication, a more significant concern would arise if the multiple regulatory arrangements resulted in a 'gap' in health and safety administration.

The Review has concluded that there is a major gap in practice for workplace health and safety in the maritime industry.

The *Workplace Health and Safety Act 1995* makes no distinction between workplaces on land and workplaces in the marine environment. Indeed, WHSQ undertakes extensive regulatory activity in commercial and recreational underwater diving activities. It is evident from this that DEIR has legislative jurisdiction for workplace health and safety in maritime environments.

In contrast, the *Transport Operations (Marine Safety) Act 1994* focuses predominantly on marine safety, particularly the seaworthiness and safe operation of vessels. Regulatory effort focuses on the design, construction, survey and operation of commercial and fishing ships. The general safety obligation that applies to owners and masters of vessels requires them to not operate a ship unless it is safe. This is defined as being seaworthy and appropriately equipped and crewed to meet the ordinary perils of the voyage. A further obligation on all persons involved with the operation of the ship (e.g. the owner, master, pilot and crew members) is that they must not cause the ship to be operated unsafely. There is no definitive meaning for 'operating a ship' that gives full clarity to the extent of this duty. However, a person would come under this provision if they caused the ship to be operated in a way that caused a marine incident (e.g. the loss of a person from a ship, a collision with a ship, material damage to a ship), or contravenes conditions of the ship's registration about safety or prescribed regulatory provisions.

It is evident the Marine Safety Act has implications for workplace health and safety (as with other forms of transport safety regulation), although this is not its primary focus. For example, the regulations under the Marine Safety Act require crew

members (of at least six months duration) of a commercial ship or fishing ship to undertake an 'Occupational Health and Safety at Sea' course.

MSQ and WHSQ have a MOU in place which determines lead agency status in the event of incidents. The MOU does not address other aspects of the relationship between the agencies. In essence, the MOU gives MSQ lead agency status if an incident occurs while the ship is at sea and WHSQ lead agency status if an incident occurs while the ship is berthed. WHSQ incorrectly concluded that this makes MSQ responsible for workplace health and safety on ships.

As a consequence, there is a gap in practice in terms of delivering structured workplace health and safety services, such as monitoring, auditing, education and information provision, to the operators of commercial vessels and fishing vessels<sup>10</sup>. The consequence of this is that operators and employers may not fully appreciate their industry hazards or fail to implement controls to manage risks because there is no likelihood or significant deterrence. It is clearly imperative that this matter be resolved, particularly in view of the risks associated with commercial shipping and commercial fishing.

In his inquest into the suspected death of vessel deckhand Phillemon Edward Mosby, the State Coroner noted the work practice required of Mr Mosby that contributed to his death. His report states: "such a manoeuvre would be prohibited on a building site if the walkway was more than a couple of metres above the ground. When the walkway was situated above the gap between two ships under way, the risk is obviously unacceptable"<sup>11</sup>. The interaction between MSQ and WHSQ means marine-based workplaces in Queensland do not have safety parity with other workplaces. Among other recommendations, the State Coroner recommended WHSQ and MSQ review the operation of their MOU and consider whether changes are needed to encourage more collaboration in responding to incidents and to enliven the jurisdiction of both agencies.

The Review was advised that, during the course of the Review, the Minister for Employment and Industrial Relations directed a review of the *Transport Operations (Marine Safety) Act 1994* and the ability of MSQ and WHSQ to respond to concerns in the maritime industry in relation to workplace health and safety. It is proposed to engage a reviewer, to review the legislation, meet with industry stakeholders and make recommendations to improve the legislative framework and operational responses to workplace health and safety matters on commercial vessels.

It is evident that commercial ships are workplaces and therefore subject to the *Workplace Health and Safety Act 1995*. WHSQ is responsible for regulating worker safety on commercial ships. However, cooperation between the two agencies is essential as the Marine Safety Act has implications for workplaces and MSQ has the capability and expertise in shipping more generally. In progressing improved workplace health and safety in the marine environment, WHSQ should consider establishing an Industry Standing Committee for the maritime industry and developing an Industry Action Plan for the maritime industry, as has occurred for other industries for which it is responsible.

<sup>10</sup> Diving appears to be the exception, given WHSQ's active regulation of the recreational and commercial diving industries.

<sup>11</sup> Office of the State Coroner, *Inquest into the suspected death of Phillemon Edward Mosby*, p.10.

### 3.4.1 Recommendation

7. The Directors-General of DEIR and Queensland Transport develop for Cabinet consideration by 31 December 2008, strategies to strengthen the government's workplace health and safety responsibilities in the maritime industry, including consideration of the following:
  - establishing an Industry Standing Committee for the maritime industry
  - developing an Industry Action Plan for the maritime industry
  - developing a standard under the *Transport Operation (Marine Safety) Act 1994* to clearly outline the meaning of 'operating' a vessel, and
  - developing a new interdepartmental Memorandum of Understanding with clear responsibilities for all aspects of workplace health and safety in the maritime industry.

## 3.5 Legislative Requirements on Mine Sites

### 3.5.1 Occupational licensing

The Workplace Health and Safety Regulation 1997 requires licences for 38 occupations in Queensland (e.g. boiler operators, crane operators and forklift drivers). These occupations involve potential risks associated with operating certain plant and equipment. To ensure operators working within a prescribed occupation have the appropriate skills and knowledge, it is a requirement under the Act to undertake training and hold the appropriate authority (certificate/licence).

The certification system provides assurance that the operators and users of high risk plant have the required level of knowledge and skill to do this safely. As a general rule, people seeking a new licence will need to be assessed in accordance with national uniform procedures.

Under the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*, mines in Queensland are exempt from the *Workplace Health and Safety Act 1995*. As such, they are not required to use licensed persons for these prescribed occupations. For all other occupations which require licensing or registration (e.g. electricians, plumbers, engineers, doctors), a person must hold the relevant licence or registration before they work on a mine site.

Instead, the mining safety Acts have general competency obligations that require a worker to have demonstrated skill and knowledge to carry out the task to the standard necessary for the safety and health of persons.

These occupations were selected for licensing as the operation of these machines involves inherent risk which can be mitigated through appropriate training and proven competency. It is not evident why these same licensing requirements do not apply to these occupations when performed at a mine. As the same risks are present, overall safety could be enhanced by requiring workers to obtain such licences prior to operating equipment.

As all but a few of these licences are assessed in accordance with national uniform procedures, they are recognised in other jurisdictions. This would assist in the movement of labour across jurisdictions and mean workers would not have to establish their basic competency each time they moved from one mine to another. Licensing of workers participating in prescribed occupations would also act as a

defence for employers seeking to prove a worker's competency to undertake the task in the event of an accident.

However, it is recognised that mining operations do present specific and sometimes unique risks and therefore occupational licensing should be viewed as a minimum requirement. The site senior executive will still have their obligation to ensure all staff are competent to undertake specific tasks on the mine site.

### 3.5.2 Plant registration

Schedule 3 of the Workplace Health and Safety Regulation 1997 requires various types of plant to be registered, including, for example, air-conditioning units, boilers, lifts, escalators and mobile cranes.

These plant registration requirements do not apply on mine sites in Queensland. Instead of this requirement, the mining health and safety Acts require the site senior executive to ensure plant used at the mine is manufactured, constructed, maintained, stored, transported and installed in accordance with any applicable specifications and instructions. It is not evident why registration requirements applicable to plant elsewhere do not apply on mine sites. The equipment has the same specification and poses the same degree of risk if not maintained correctly. Any safety management system relating to a piece of plant registrable under the Workplace Health and Safety Regulation 1997 should be maintained, as a minimum, to the standard required as part of registration. Therefore, this should not place any additional costs on business. As with occupational site-specific requirements, site senior executives will still need to ensure plant is operated within its specifications and in accordance with instructions.

The issues around 'registrable plant' apply equally to operating plant for petroleum, gas and geothermal activities.

### 3.5.3 Regulation of major hazard facilities on mining sites

CHEM Services advise there are two mines in Queensland that have MHFs – Mt Isa and Phosphate Hill. As these mines are regulated by the *Mining and Quarrying Safety and Health Act 1999*, the MHF provisions of the *Dangerous Goods Safety Management Act 2001* do not apply.

The Mining and Quarrying Safety and Health Regulation 2001, the Coal Mining Safety and Health Regulation 2001 and the *Petroleum and Gas (Production and Safety) Act 2004* use the National Occupational Health and Safety Commission's *Control of Major Hazard Facilities National Standard* as the basis for regulating MHFs. However, the Mining and Quarrying Safety and Health Regulation is more flexible than the National Standard as it enables a facility to be declared an MHF using the criteria of risk in contrast to the National Standard which is formula driven.

If a MHF on a petroleum lease is declared to be a MHF under the DGSM Act, the *Petroleum and Gas (Production and Safety) Act 2004* no longer applies to the facility. The same does not apply to a MHF on a mine site.

The *Dangerous Goods Safety Management Act 2001* is the means by which the National Standard is adopted in Queensland. Its provisions are very similar to the National Standard. However, the *Dangerous Goods Safety Management Act 2001* is more flexible in that it enables a facility to be declared using the criteria of risk (in contrast to the National Standard which is a formula driven approach). Applying the



*Dangerous Goods Safety Management Act 2001* to all mine sites would enable all MHFs in Queensland to be regulated consistently.

DME and CHEM Services need to determine appropriate administrative arrangements so mines continue to deal with DME with CHEM Services being the specialist regulator in the regulation of MHFs on mine sites.

### **3.5.4 Recommendations**

8. The Director-General of the Department of Employment and Industrial Relations seek Cabinet approval by 31 December 2008 to amend the *Workplace Health and Safety Act 1995* to ensure that:
  - the requirements for occupational licensing under the Act apply as a minimum requirement on mine sites, petroleum and gas tenures and geothermal exploration sites, and
  - the plant registration requirements under the Act apply as a minimum requirement on mine sites, petroleum and gas tenures and geothermal exploration sites.
9. The Director-General of the Department of Employment and Industrial Relations seek Cabinet approval by 31 December 2008 to amend the *Dangerous Goods Safety Management Act 2001* so the major hazard facility provisions of the Act apply on mine sites, petroleum and gas tenures and geothermal exploration sites.
10. The Directors-General of the Department of Employment and Industrial Relations and the Department of Mines and Energy put in place joint administrative arrangements for the enforcement of provisions relating to occupational licensing, plant registration and major hazard facilities by 31 March 2009.

## 4 Regulatory Approach

### 4.1 Resource Management

#### 4.1.1 Attracting and retaining resources

All health and safety regulators reported difficulties recruiting and retaining both generalist workplace health and safety inspectors, as well as occupational hygienists, ergonomists, and specific industry and/or risk specialists. Not only are regulators from within the public sector 'poaching' staff from each other, they are also finding themselves having to compete with the private sector and struggling to match the remuneration private sector employers are able to offer to the shrinking cohort of available workers. To counter this, and consistent with other areas across the public sector facing skills shortages, some regulators are using, and/or considering using section 70 contracts (which allow increased remuneration) to provide them with more flexibility in attracting employees.

An undersupply of workforce health and safety staff in public sector regulators looms as a major issue into the future. Not only may it jeopardise the ability of government to deliver the services the community expects, it also potentially undermines the health and safety of Queensland workers. The health and safety regulators will need to continually look at ways to respond to this challenge. The Review believes the proposed Health and Safety Regulators Council can play an important role in this regard.

#### 4.1.2 Funding frameworks

There has been an inconsistent approach to funding health and safety regulatory bodies in Queensland. Currently, WHSQ, the Electrical Safety Office and the Petroleum and Gas Directorate are all effectively self-funded. Maritime Safety Queensland, CHEM Services, the Mines Inspectorate and the Explosives Directorate are funded from the Consolidated Fund.

**Table 4.1: Funding Sources for Regulatory Agencies 2007–2008**

Agency	Funding source			
	Consolidated Fund	Controlled Revenue*	Administered Revenue**	Other
DEIR – ESO	–	\$3.42m	–	\$7.98m
DEIR – WHSQ	\$25.6m	\$2.0m	\$28.5m	\$34.3m
CHEM Services	\$1.4m	–	–	–
DME – Mining	\$8.4m	–	–	–
DME – Explosives	\$5.1m	\$1.8m	\$0.3m	–
DME – Petroleum and Gas	\$1.4m		\$2.4m	
QT – Rail Safety^	\$4.4m	–	–	–
QT – MSQ	\$110.6m	–	\$92.0m	–
QT – Road^^	\$99.5m	–	–	–

Source: Information provided by relevant regulatory agencies.

- Notes:
- \* Administered revenue is taxes, fees and fines collected by departments and is remitted to Consolidated Fund.
  - \*\* Controlled revenue is revenue collected by departments which they retain for their own purposes.
  - ^ Railway managers and operators pay an annual levy under the Transport Infrastructure (Rail) Regulation 2006. The Review was advised that these levies cover the operational costs of the Rail Safety Unit.
  - ^^ Queensland Transport collected \$200.9m in transport and traffic fees in 2006-2007.

Like many other governments, the Queensland Government operates in an environment of tight controls on spending, with increased expectations of service. In a competitive labour market and with restricted funding this is becoming increasingly difficult. As the functions of health and safety regulators are to assist industry in managing and mitigating risk, there is an argument that the regulated industries should contribute to the costs of operating these inspectorates in a way that keeps pace with the size and risks of the industry.

The Review notes that in the 2008–2009 State Budget, the Queensland Government announced the introduction of a levy per employee on all coal and metalliferous mines and quarries to recover the cost of mining, quarrying and explosive safety services provided by the DME. The levy is expected to generate around \$26m in a full year.

## 4.2 Achieving Compliance

### 4.2.1 Different regulatory approaches

To encourage compliance, regulators use a variety of mechanism, namely:

- information and advice on regulatory compliance
- audits/inspections carried out, either on a routine or random basis and/or targeted at those which pose the greatest risk
- enforcement tools, e.g. enforceable undertakings, statutory notices or directives, and
- penalty regimes to punish those who are non-compliant and deter others from offending.

The approach and focus of the health and safety regulatory agencies across the Queensland Government and their choice of regulatory approaches is influenced by the nature of the legislation being administered, the legal duties imposed, the types of industries/activities being regulated and the culture of the agency.

A short description of each agency's approach is below.

#### **CHEM Services (DES)**

CHEM Services inspectors regard themselves as advisors who monitor and make recommendations through a rolling program of comprehensive and complex audits and safety report assessments. Although the inspectors issue directives, a significant focus of their activity is educative. This is reinforced by the *Dangerous Goods Safety Management Act 2001* which states that a key function is "to help persons... by providing advice and information..." (section 58(e)).

## **WHSQ and ESO (DEIR)**

A consistent comment made to the Review regarding WHSQ's and ESO's approach by both other regulators and industry was that they placed too much emphasis on notices, investigations and prosecutions. It must be recognised that due to the breadth of coverage and the volume of complaints and incidents they are required to investigate, WHSQ and ESO agencies must often prioritise resources in favour of a policing deterrent approach. However, DEIR advise that in 2006–2007, WHSQ undertook 1745 'workplace advisories', i.e. a free workplace health and safety consultation for small business conducted by advisors, not inspectors.

A recent external review of WHSQ's and ESO's enforcement approach found that while their regulatory scheme was sound and generally well administered, there were improvements that should be made. The department is now considering options for implementing the findings and recommendations of the review.

## **Mines, Petroleum and Gas and Explosives Inspectorates (DME)**

Inspectors highlight their industry knowledge and advisory, consultative capacity in inspections and audits.

The Mines Inspectorate inspect and audit mines and ensure safety management systems are in place to control to risk. Consistent with the recommendations of a recent review, inspectors with non-mining occupational health and safety skills have been employed to broaden the inspectorate's focus. The Petroleum and Gas Inspectorate audit and inspect petroleum and gas installations and drilling operations to ensure compliance with safety management plans and other safety provisions of the Act. They also investigate petroleum and gas incidents which occur in the general community. One of their key activities is the delivery of education programs to people involved in the gas industry, senior emergency service personnel, TAFE college students and the community. The Explosives Inspectorate regard their licensing function as critical to minimising the risk of problems with industry participants. The majority of prosecutions for breaches of explosives regulation are handled by the Queensland Police Service.

## **Maritime Safety Queensland, Rail Safety and Road Safety (Queensland Transport)**

All three transport safety regulators address transport infrastructure, the safety of the vehicle, train and vessel, and behaviours.

Maritime Safety Queensland has different regulatory interventions for the different regulated populations, i.e. recreational versus commercial. Commercial ship standards, the accreditation of ship designers, and the approval of training providers complement inspection activity to determine seaworthiness. MSQ's enforcement partners, including the Queensland Boating and Fisheries Patrol and Queensland Water Police, conduct on-water enforcement by issuing infringement notices, principally related to licensing, safety equipment and registration offences.

Rail Safety's approach is based on a co-regulatory model with responsibilities shared between industry participants, industry associations and government. Rail Safety Officers' role is to assess whether a rail transport operator has the competency and capacity to manage all of its safety risks before granting accreditation and work with

operators to improve the safe carrying out of railway operations, through managing and controlling the risks associated with those operations.

The underpinning compliance and enforcement policy allows Rail Safety to undertake independent 'no blame' investigations for the purposes of establishing factual circumstances and identifying recommendations to prevent reoccurrence. On average one investigation of this type is undertaken each year. Queensland Transport view this as part of a 'just culture' which enhances trust between the regulator and those being regulated but makes a clear distinction between behaviour and standards that are acceptable and those that are not.

Road safety enforcement activity is undertaken by both the Queensland Police and Transport Inspectors. Most infringements are handled as ticketable offences, with only the most serious breaches progressing to court.

The Queensland Ombudsman (2007) understands that the individual circumstances in which regulators operate legitimately influences their regulatory approach. However, all regulatory schemes should be administered by regulators in a way that is:

- effective – the regulatory scheme achieves its objectives
- consistent – the regulator fairly and equitably enforces the scheme
- transparent – the regulator's policies and procedures are open to scrutiny and
- accountable – the regulator has and adheres to policies and procedures for administering the scheme.<sup>12</sup>

### **Compliance/enforcement policies**

Each of the health and safety regulators has a documented compliance/enforcement policy for dealing with how, and under what circumstances, enforcement tools are used, investigations conducted and prosecutions commenced. The policies adopt graduated interventions with the options chosen based on the facts of the circumstance, such as the severity of the risk or compliance history of the duty holder.

Having a documented compliance/enforcement policy not only provides guidance for inspectors, it also assists them to take consistent and appropriate action. It also provides some degree of transparency and accountability for decision making. However, there appears to be limited awareness by stakeholders of regulators' documented compliance/enforcement policies and these documents are not readily apparent from internet searches of regulators' websites. Publication of compliance/enforcement policies on websites is an effective way to raise awareness about workplace health and safety obligations and the consequences of not addressing them. It also serves as a clear accountability measure for regulators. Arguably, the *Freedom of Information Act 1992* provides that regulators must make enforcement policies publicly available<sup>13</sup>.

Many regulators indicated that their compliance/enforcement policies are currently being reviewed to update them and ensure consistency with national developments. However some policies had not been reviewed for several years. The Mines

<sup>12</sup> Queensland Ombudsman, *Tips and Traps for Regulators*, page 5.

<sup>13</sup> Queensland Ombudsman, *Tips and Traps for Regulators*, page 47.

Inspectorate is one of the few regulators across the Queensland Government that has been reviewed regularly. WHSQ and ESO undertook an external review of its enforcement approaches in 2007. All regulators need to critically evaluate their approaches to health and safety to ensure they are achieving best practice workplace health and safety outcomes and that limited resources are being used effectively.

### Providing advice

The challenge for all regulators is to maintain an appropriate balance between the enforcement of the legislation and the provision of advice to those regulated on how to comply. There is a strong culture and focus on nurturing compliance capacity in the DME inspectorates, CHEM Services and Rail Safety through the provision of onsite advice and information. Stakeholders commend them for this advice. Onsite preventative advice and assistance are not perceived by stakeholders to be a high priority of WHSQ and ESO. This is despite their Infoline service, small business advisory and community engagement programs, and extensive publications and information products catalogue. The capacity for WHSQ and ESO to undertake advisory services is influenced by the large number of businesses which they regulate.

In seeking advice on how to approach a problem, or in trying to understand what is required of them legislatively, stakeholders should expect and receive guidance. Advice is particularly important for the large number of small and medium size enterprises that exist in Queensland. Given the detailed nature of many regulations, regulators have an essential role in ensuring organisations are aware of their obligations. In a report to the Victorian Government, it was stated that, “while the role of inspectors is not to spoon feed companies or provide in depth consultancy services, unwillingness to indicate the basic steps needed to be taken to rectify a breach does not encourage compliance”.<sup>14</sup>

However, the Queensland Ombudsman<sup>15</sup> has clearly stated that the provision of advice must not come at the expense of diverting resources from the core role of regulatory enforcement. He highlights the difficulties of giving advice to a regulated industry including the risk of inspectors becoming de facto consultants and regulatory agencies creating situations where companies have no incentive to actively seek information for themselves.

#### 4.2.2 Regulatory balance

Differences between how regulatory agencies choose to enforce their legislation, and when and how they focus their efforts, is not simply whether a persuasive, advisory approach or a deterrent, punitive approach is best. It is about achieving a balance. Each approach has advantages and regulators need to use approaches that best achieve improved health and safety outcomes in each circumstance. The basis of good regulatory practice lies in picking the right tool for the job, knowing when to use them in combination and having a system for recognising when the tools are inadequate so that new tools can be invented.<sup>16</sup>

<sup>14</sup> Maxwell, *Occupational Health and Safety Act Review*, Chapter 25.

<sup>15</sup> Queensland Ombudsman, *The Regulation of Mine Safety in Queensland, A Review of the Queensland Mines Inspectorate*, page 55.

<sup>16</sup> Sparrow, *The Regulatory Craft*, page 36.

Regulators and inspectors exercise judgement and consider a range of variables when picking the most effective compliance option for the circumstance, including the nature of the industry and duty holders being regulated. For example, stopping operations and production at a mine site may have more of an impact in terms of promoting future compliance than a fine which can be easily absorbed by a large multinational company. Notwithstanding this, when legislation identifies statutory offences it is clearly Parliament's intention that prosecution action will be applied to rectify non-compliance for serious breaches.

The Queensland Ombudsman<sup>17</sup> argues that sometimes agencies have little choice but to take prosecution action for a safety breach. These circumstances may include:

- gross negligence and disregard
- demonstrated pattern of disregard for safety
- little shown intention of rectifying safety concerns
- prosecution may be the only tool available to deter offenders, and
- widespread public concern and calls for justice.

Queensland Government agencies responsible for health and safety administration should expect scrutiny and questions from the Queensland Ombudsman, coroners, the Parliament and other interested parties when due investigative processes and proper consideration of prosecution action are not evident. The Queensland Ombudsman's *Workplace Electrocution Report*<sup>18</sup> severely and publicly criticised the then Division of Workplace Health and Safety and the Electrical Safety Office for their "lack of investigative and regulatory endeavour" during the investigation of nine fatal electrical incidents that resulted in the deaths of 12 people. The State Coroner<sup>19</sup> in his findings of the inquest into the suspected death of a deckhand lost overboard from a commercial pilot vessel asked the General Manager MSQ to:

- establish why no action was taken in relation to a complaint with a view to ensuring there is no repeat of such failings, and
- review the manner in which the marine incident was investigated to establish why no consideration seems to have been given to initiating prosecution action under the *Transport Operations (Marine Safety) Act 1995*.

Comments and findings of independent officers, such as the Queensland Ombudsman and State Coroner, should be heeded by all agencies and regarded as an opportunity to integrate the 'lessons learned' into their own regulatory approach.

### 4.2.3 Regulatory independence

#### Regulatory capture

"Regulatory capture is the theory that a regulator and the industry it regulates build working relationships that have the potential to lead to the regulator becoming unwilling to perform its compliance tasks diligently and impartially in respect of the

<sup>17</sup> Queensland Ombudsman, *The Regulation of Mine Safety in Queensland, A Review of the Queensland Mines Inspectorate*, page 95.

<sup>18</sup> Queensland Ombudsman, *Workplace Electrocution Project*, page xvii.

<sup>19</sup> State Coroner, *Inquest into the suspected death of Phillemon Edward Mosby*, pp. 15 & 18.

entities so as to avoid jeopardising those relationships<sup>20</sup>. Certain characteristics which may increase the risk of regulatory capture occurring include:<sup>21, 22</sup>

- the regulator is small, has limited resources and a low public profile, and regulates large well-resourced companies that make significant economic contributions
- the regulator is part of an agency responsible for supporting, promoting and developing the industry and shares the same Director-General, CEO or Minister
- skills shortage and limited regulator resources results in industry controlling information and expertise, and
- limited pools from which to recruit the required expertise means inspectors inevitably regulate companies they previously worked for and people they previously worked with.

Given the above characteristics, the independence of the Mines Inspectorate and Rail Safety may be questioned in relation to their interactions with the mining industry and Queensland Rail (QR) respectively. Factors which may contribute to the perception of regulatory capture include:

- the Mines Inspectorate is located within a department responsible for promoting and developing an industry which provides significant revenue to the state in the form of royalties
- Rail Safety and Mines Inspectorate are located in departments that support and promote their regulated industries
- safety outcomes and objectives are set within the context of other departmental priorities in public documents such as Service Delivery Statements
- inspectors are often recruited from the regulated industry
- there are relatively small number of regulated entities, and
- there are relatively low levels of prosecution activity.

The issue of regulatory capture was canvassed with mining and rail industry stakeholders.

Mining worker representatives identified past problems in their interactions with the mining inspectorate but are satisfied with the current approach and levels of cooperation. Although mining worker representatives indicated a positive change in the department's willingness to investigate and take prosecution action they would still like to see more effort in the issuing of directives. In 2006–2007, the Mines inspectorate conducted 1400 audits/inspections resulting in 120 corrective action requests. The Queensland Ombudsman's (2008) mining inspectorate investigation found that from 2001 to March 2008 there were ten prosecutions under the relevant Acts. According to information provided to the Review in April 2008, a further nine matters are currently before the courts or are being comprehensively investigated. The clearest way to address perceived regulatory capture in the mining industry is to relocate the Mines Inspectorate to another portfolio. This was strongly opposed by the mining worker and mining industry representatives who believe the current

<sup>20</sup> Queensland Ombudsman, *Tips and Traps for Regulators*, page 63.

<sup>21</sup> Queensland Ombudsman, *The Regulation of Mine Safety in Queensland, A Review of the Queensland Mines Inspectorate*, pp. 123-126.

<sup>22</sup> Sparrow, *The Regulatory Craft*, page 35.



arrangements have been very effective in improving worker health and safety outcomes.

In relation to rail safety, the Review notes that the Minister for Transport, along with the Treasurer owns Queensland Rail on behalf of the government. However, rail worker representatives raised no concerns with Rail Safety's independence and emphasised the importance of the inspector's expertise in handling the specifics of rail incident issues. Injury and fatality data do not indicate any regulatory failures. In the period 2006–2007, Rail Safety completed a total of 45 rail safety operations audits/inspections resulting in 130 recommendations for action. Despite the fact that there have been no prosecutions conducted by Rail Safety inspectors over the past two years, stakeholders indicated that Rail Safety's enforcement approach does have a strong deterrent effect. For example, following what is commonly known as the tilt train incident, QR was not fined but the speed limit for the tilt train was set at 100km/h for a period of two years. QR reported to the Review that the 100km/h limit cost more than any financial penalty likely to be imposed by a court.

Both Rail Safety and the Mines Inspectorate argue there is sufficient separation of the regulation functions in their respective departments.

The Queensland Ombudsman did not find evidence to substantiate the claims that the Mines Inspectorate is inappropriately influenced by the mining industry in the performance of its functions. He concluded however that the perception of regulatory capture is not unreasonable. Several recommendations were made to address the risks to operational independence, including authorising the Executive Director to commence prosecution action and the creation of an independent Commissioner for Mine Safety to report to Parliament on the performance of the Mines Inspectorate. If these and other recommendations are not implemented the Queensland Ombudsman would support a relocation of the Mines Inspectorate to DEIR.

### **Health and safety in government departments**

As the employer of approximately 185 000<sup>23</sup> full-time equivalent workers, the Queensland Government has substantial obligations in ensuring the health and safety of its workers. While all of the health and safety Acts apply to the state, the Acts vary in relation to whether the state is liable to be prosecuted for an offence. For example, the *Petroleum and Gas (Production and Safety) Act 2004* specifically precludes the Commonwealth or a state from prosecution; while the *Workplace Health and Safety Act 1995* makes no explicit exclusion for the Commonwealth or State and is silent on proceedings against the state as far as offences are concerned.

There are a variety of tools that health and safety agencies can use in addressing health and safety concerns in Queensland Government workplaces including statutory notices. However, due to legal complexities in the state prosecuting itself, prosecution action is not available to health and safety agencies. This may lead to the perception that the government is not adequately policing its own workplace health and safety standards. Workplace health and safety inspectors relayed industries' complaints about uneven playing fields, i.e. one standard for industry, another for government, and concerns about the lack of an effective deterrent.

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<sup>23</sup> Office of the Public Service Commissioner, Minimum Obligatory Human Resource Information, March 2008.

#### 4.2.4 Recommendations

11. The Director-General, Queensland Transport, assess the model proposed by the Queensland Ombudsman's report into the Mining Inspectorate to minimise regulatory capture risks and report to the Minister for Transport on its applicability to rail safety by 31 December 2008.
12. Health and safety regulators engage in periodic reviews (at least once every three years) of their regulatory strategy and practices by independent experts to ensure they represent a balanced and 'best practice' approach to regulatory non-compliance. Health and safety regulators who have not undertaken a review of their regulatory strategy and practices in the past two years to initiate a review by 31 March 2009.
13. The Health and Safety Regulators Council oversee the reviews of regulatory strategy and practices and commit to the continued development of 'best practice' approaches taking into account the validity of different approaches.
14. Health and safety regulators publish their compliance and enforcement policies on their websites by 31 December 2008.

### 4.3 Interagency communication

#### 4.3.1 Queensland Ombudsman's advice

Inevitably, the various health and safety legislative frameworks and enforcement activities create 'touch points' of common interest and, as such, effective interagency communication is required. In a recent report outlining the principles of good regulatory practice, the Queensland Ombudsman noted that the level of communication and cooperation between regulators with overlapping responsibilities is a key determinant of the effectiveness of their respective regulatory schemes and their ability to achieve their goals<sup>24</sup>. The Queensland Ombudsman's conclusion was partly based on an analysis of the findings of their investigations into the operations of various public sector agencies, including the Workplace Electrocution Project which examined the interaction between the then Division of Workplace Health and Safety Queensland and the Electrical Safety Office. The Ombudsman has developed a Regulator's Audit Tool, based on the report's recommendations, which can be used by regulators to self-assess their performance, including their policies and practices for working with other regulators.

#### 4.3.2 Communication between inspectorates

Generally, inspectors agree they work well together when a major incident occurs, however they would welcome formal agreements/protocols to address areas of uncertainty around jurisdiction and responsibility. For example, the Review was advised that a recovery plan strategy, nominating lead agency status for hazardous material incidents, was recently finalised. The Environmental Protection Agency will assume lead agency status in most instances. Other signatories are DES, DEIR (asbestos issues), Queensland Health and the Department of the Premier and Cabinet.

Regional networks are very important to effective cooperation and inspectors reported the stronger the inter-inspectorate personal relationships, the more effective

<sup>24</sup> Queensland Ombudsman, *Tips and Traps for Regulators*, page 41.

the working relationship. When inspectors enjoy good working relationships they seek counsel and advice and refer issues to each other, which may fall outside the prescriptive ambit of the relevant MOU. Understandably, relationships across inspectorates take time to develop and many inspectors are concerned about how these relationships will be maintained or replaced into the future given staff turnover. A structured approach to promoting a minimum level of interaction between health and safety inspectors would have merit.

### 4.3.3 Communication between Rail Safety and WHSQ

One of Rail Safety's primary functions is to accredit rail operators and to ensure accredited rail operators comply with their safety management system. The safety management system must cover all operational risks associated with their business as a rail transport operator. As part of their function, WHSQ and ESO are respectively responsible for a range of workplace health and safety and electrical safety risks which may occur in the course of the rail operator's business. This would include, for example, machinery or electrical shock hazards in the workshop, near misses whilst performing live electrical work and manual handling while performing track work. Incident notifications and resulting investigations by WHSQ and ESO are not shared in a formal and systematic way with Rail Safety. In these circumstances, it would be difficult for Rail Safety to make a full and complete assessment about the implementation of the accredited rail operator's safety management system.

Similarly, WHSQ representatives described difficulties in accessing information from Rail Safety in relation to particular incidents and events where there was a joint interest. From their perspective, Rail Safety staff indicated they are legislatively prohibited from sharing information gathered during protected inquiries. Clearly there is a need for both organisations to formally articulate information sharing protocols.

In line with the national rail reforms, a Rail Safety Bill has been introduced into the Queensland Parliament. Significantly different points of view are held by senior WHSQ and Rail Safety officers about the impact of the Bill and its regulatory scope, particularly in relation to construction activities. A number of these concerns were analysed by the Review, which found that WHSQ's concerns were unfounded. Uncertainties need to be resolved as a matter of priority to ensure a single Queensland Government position is presented to industry and a revised MOU finalised before commencement of the legislation.

### 4.3.4 Recommendations

15. The Health and Safety Regulators Council assess their agencies' effectiveness in working together as regulators using, as a minimum, the measures outlined in the Queensland Ombudsman's recent report on good regulatory practice, *Tips and Traps for Regulators*, (November 2007), by 31 March 2009.
16. The Directors-General of Queensland Transport and the Department of Employment and Industrial Relations ensure that regulatory responsibilities between Workplace Health and Safety Queensland (DEIR) and Rail Safety (Queensland Transport) be addressed as a priority and incorporated into a new Memorandum of Understanding to support the commencement of the *Rail Safety Act 2008*.

## **4.4 Memorandums of Understanding**

Memorandums of understanding have been adopted by many of the identified agencies as a means of identifying areas of joint jurisdiction and implementing administrative arrangements to manage shared areas of responsibility. MOUs also exist with other agencies such as the Queensland Police Service or the Environmental Protection Agency. Other types of administrative instruments have also been adopted to foster working relationships. For example, the Explosives Inspectorate uses the Queensland Police Service Operations Manual to provide information to police officers about contacting the Explosive Inspector should they require assistance in handling explosives.

Memorandums of understandings identified during the Review include, but are not limited to those between:

- Department of Emergency Services and WHSQ/ESO
- Department of Emergency Services and DME (Petroleum and Gas)
- Department of Emergency Services and DME (Explosives)
- WHSQ/ESO and Maritime Safety Queensland
- WHSQ/ESO and Land Transport and Safety Division, Queensland Transport
- Department of Natural Resources, Mines and Water (now Mines and Energy) and Department of Industrial Relations (now Employment and Industrial Relations)
- Queensland Transport (Marine Safety Queensland) and Department of Mines and Energy (Petroleum and Gas Inspectorate)

### **4.4.1 Implementation of memorandums of understanding**

Having up-to-date, comprehensive memorandums of understanding is essential for the effective interaction of the regulatory agencies. The Review has identified the following conclusions about the content and governance of the MOUs:

- many have expired and have not been reviewed in accordance with the provisions contained within the MOU; although departmental representatives advised some are currently under review
- in some cases, expiry or review dates were not included in the MOU, which increases the likelihood of the MOUs not being maintained or kept current
- several contained the name and contact details of individuals who no longer work for the organisations; again suggesting that MOUs are not adequately maintained
- there is no consistent structure or 'look and feel', which may be an impediment for inspectors who refer to the documents on a regular basis
- not all MOUs are available for public access or readily apparent from internet searches of regulators' websites, and
- interdepartmental cooperation arrangements in regards to regular meetings to share information on legislation, operational and policy issues have not been as well documented as the incident response provisions.

### **What do the inspectors think?**

Inspectors from all agencies generally consider the MOUs to be useful tools for identifying jurisdiction for incident response. Occasional 'grey areas' are usually

quickly addressed at the operational level. Regardless of their sometimes different approaches, all inspectors are committed to improving health and safety outcomes for Queenslanders and are keen to ensure responsibility for incident investigations do not fall through 'gaps'. If uncertainty arises, operational managers will direct an inspector to attend and discuss issues of jurisdiction with the other attending regulators. Legal and investigation managers confirmed that the number of enquiries from inspectors seeking advice on jurisdiction and lead agency status is few. When jurisdiction cannot be resolved locally, matters are escalated to an appropriate senior officer/s for discussion and resolution.

### **What do other stakeholders think?**

No major issues relating to MOU administration were identified in stakeholder submissions, however, industry would like to see more clarity around lead agency status when multi-agency audits occur, and a more consistent approach across different regulators. One major industry group called for a user-friendly, 'ready reckoner' type document to assist businesses and employers in identifying the appropriate agency should an incident occur or if they want to seek information to help them manage risk.

The Queensland Ombudsman<sup>25</sup> argues that regulators should implement effective processes to provide information to the public about their regulatory policies and practices. Publishing MOUs, or at least a summary of their content, would improve regulatory transparency and provide useful direction for businesses, consequently saving regulators time and resources by reducing the number of issues incorrectly referred to them.

A review of published MOUs and the Queensland Ombudsman's recent report on good regulatory practice indicates that MOUs should as a minimum address the following issues:

- governance – term of the MOU; responsibilities and processes for maintenance and review; withdrawal procedures; mechanisms to resolve uncertainties or disagreements between the parties; mechanism to discuss and share learnings relating to any aspect of MOU implementation
- staff and public availability – details of how the MOU will be provided to inspectors and incorporated in training programs; commitment to, and details of how the MOU will be made publicly available
- policy context – mechanisms to ensure agencies inform each other of legislation and policy developments which may have consequential impacts; mechanisms for developing communication strategies, information products and common safety messages
- investigations and enforcement – clear delineation of responsibilities and, where relevant, establishment of lead and support agency status; arrangements for sharing information about investigation findings and clarity about what information cannot be disclosed due to confidentiality, privacy or other legislative considerations
- general information sharing – provisions to maximise the sharing of information among regulators and minimise duplication of effort including intelligence at operational/inspector level, and statistical reports and research findings, and

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<sup>25</sup> Queensland Ombudsman, *Tips and Traps for Regulators*, page 47.

- referring inquiries and complaints – systems to ensure notifications are referred to the most appropriate regulator in a way that is timely, minimises the burden on the notifying member of the public and prevents notifications from falling through the gaps.

#### **4.4.2 Recommendations**

17. Health and safety regulators ensure all Memorandums of Understanding between agencies are progressively reviewed and updated by 30 June 2009, overseen by the Health and Safety Regulators Council.
18. Health and safety regulators ensure all future Memorandums of Understanding cover a broader range of issues, including governance arrangements, information sharing, providing advice and support, managing notifications and referrals, frameworks for resolving disagreements, and responsibilities for incident response and enforcement.
19. Health and safety regulators ensure all Memorandums of Understanding be made publicly available by 30 June 2009.

## 5 Organisational Arrangements

### 5.1 *Criteria for Evaluating Options*

The objective of this Review is to determine the most effective and efficient whole-of-government arrangements for the administration of workplace health and safety regulation to enhance worker protection in the workplace. There are a number of ways that this may be achieved, including:

- legislative amendments
- improved whole-of-government governance arrangements for health and safety regulation
- improved communication to businesses in areas of multiple regulatory activity
- the development of strategies to address 'gaps' in health and safety regulation
- improved communication and cooperation between regulatory agencies, and
- changes to organisational structures across government.

In assessing improvements to the current arrangements, it is important that all of the above mechanisms are considered and the response that most directly addresses the identified problem is recommended.

A number of key criteria have been identified to evaluate the merits of each organisational option, namely:

- worker health and safety outcomes
- regulatory impact on business
- the efficient use of government resources
- independence and transparency
- adequate resourcing
- a contemporary, responsive and effective inspectorate
- stakeholder engagement, and
- organisational alignment with others areas of government with shared goals.

Each of these criteria is described below.

#### **Worker health and safety outcomes**

Although clearly influenced by the efficacy of other criteria, the ability of organisational arrangements to enhance worker protection by identifying and controlling risks and reducing the incidence of death and injury is the ultimate measure of a health and safety regime's effectiveness. No major imperative for change is reflected in the injury rates, stakeholder submissions or other evidence gathered during the Review. It appears the current regulatory arrangements are broadly effective in managing risks to health and safety, although improvements in general workplace health and safety outcomes in recent years have been modest.

**Impact on business**

The organisational arrangements should minimise the regulatory burden on business and other regulated groups, particularly in the areas nominated in industry submissions to the Review by some stakeholders – audits/inspections, seeking information and advice, and reporting incidents. Accessible, comprehensive, prevention-focused information and simpler incident notification arrangements should reduce barriers to compliance.

**Efficient use of government resources**

Organisational arrangements should maximise the use of the available resources for workplace health and safety services, including common functions such as legal and research units and corporate overheads.

**Regulatory independence, transparency and consistency**

The perception and reality that regulators are sufficiently independent from those they regulate to ensure the public interest is not compromised must be ensured. Organisational arrangements should also support industries' expectations of operating on a 'level playing field' characterised by regulators administering their responsibilities fairly and equitably. Workers health and safety at work should be protected consistently, regardless of the industry in which they are employed.

**Adequate resourcing**

Organisational arrangements should support adequate and appropriate funding for compliance and enforcement activities. Those who create the risk should contribute to its control and regulation.

**A contemporary, responsive and effective inspectorate**

Health and safety inspectorates must maintain core technical skills and industry credibility. Inspectorates need to be responsive to changing circumstances and risks in the industries being regulated. Organisational arrangements should facilitate a regular review of 'best practice' industry regulation. Establishing organisational structures to facilitate staff recruitment and retention is also an important issue for government.

**Stakeholder engagement**

Formal consultative arrangements are a consistent feature of Queensland's workplace health and safety legislation. These bodies are fundamental to engendering participation and ownership, by providing stakeholders with the opportunity to contribute to the development of policy and compliance strategies.

**Alignment within government**

Organisational arrangements should facilitate work units with shared organisational goals, common industry groups and/or stakeholders to work together. This can be a challenge for government in that realigning work units to strengthen relationships in one aspect may have a detrimental impact on relationships in another area. Organisational arrangements should clearly define jurisdictions to minimise duplication and gaps and to address any uncertainties in a systematic way.



Organisational arrangements should also promote Queensland's role in the national harmonisation agenda.

## **5.2 Options**

### **5.2.1 Background**

Various organisational options were identified through agency and stakeholder consultation and research into models in other jurisdictions. It is evident there is no single best organisational arrangement and jurisdictions have adopted a variety of models. In some instances, there are strongly held opposing views on organisational options.

Several stakeholders referred the Review to the Health and Safety Executive (UK), the Department of Consumer and Employment Protection (DOCEP) (WA) and the Victorian Workcover Authority (Victoria). A description of these organisations is at Appendix 9.

During the course of the Review, SDPC consulted with current and former officers of integrated health and safety agencies (departments and statutory authorities). While it was beyond the scope of the Review to fully critique other jurisdictions' agencies, some useful observations were made by the officers consulted. These are summarised below:

- the organisational model to be followed within the agency is critical; some agencies have maintained specialist streams, while others have moved to more generalist approaches
- one agency which had specialist regulator divisions (including its own policy development capability and some corporate service capacity), saw this as a strength as it gave each division a degree of independence while managing regulatory overlaps through internal communication channels
- maintaining separate capabilities within an organisation means some of the efficiencies available for forming a larger organisation may not been realised; some efficiencies and savings may be gained from centralising services, however this was not overstated
- the degree of cooperation and discussion between divisions differed and was largely dependent on the approach of the individual general managers and the extent they considered cooperation would assist them in achieving their goals
- the location of health and safety regulator within a single agency was said to have overcome past problems when safety regulators were located within business/industry development departments
- a single agency can create critical mass, profile and an ability to deal with a range of issues; administrative efficiencies can be achieved, for example one licensing office, shared business and corporate services, joint funding of information technology budgets and coordinated public education campaigns
- a single agency can contribute to coordinated representation in national forums
- a single agency can lead to improved training of staff, better career prospects, enable more flexibility in human resource management and remuneration regimes, and professional development opportunities
- with respect to organisational culture, it was anticipated technically qualified and professional inspectors would leave once their units became part of a larger

health and safety organisation; however the organisation did not experience a high turnover of professionals

- a statutory authority is in a stronger position to maintain a high profile across industry and within the broader community and also
- a statutory authority clearly distinguishes between the regulator and those regulated
- there are benefits in bringing together health and safety experts from across government; they can look across their areas of responsibility, identify the processes and systems that work well and incorporate the 'learnings' in other related areas; one regulator reported streamlining safety management systems so that there was a single model applicable for all
- the creation of a single agency can reduce the burden for industry in terms of identifying the 'right' regulator and notifying events, however the regulators were careful not to claim 'one-stop-shop' status; one regulator stated: "it doesn't matter how you break it up there is always more than one regulator involved in the area"; memorandums of understanding with other agencies are still required within the agencies to manage areas of overlapping activity and shared responsibilities
- a key theme was the importance of managing cultural issues, such as perceptions about parity in the organisation's structure, professional identity, and uniqueness of approach; regulators experiences of bringing previously separate inspectorates together highlighted the sustained effort necessary to consolidate and create an effective and efficient organisation
- without proper attention to the organisational culture and human issues, any change may simply create alternative interfaces without developing the working and regulatory relationships that any organisational rearrangement of workplace health and safety administration would hope to achieve
- there have been experiences with regulatory functions moving into integrated health and safety agencies, but subsequently been moved out – examples of this include rail safety (UK), mine safety (NSW and currently under consideration by the Tasmanian Government), and
- amalgamating regulatory agencies will not of itself streamline incident reporting, as businesses will still need to comply with statutory requirements.

Although lessons may be learned from other jurisdictions, it is acknowledged their organisational arrangements have resulted from their unique combination of historical, political and public administration factors, as well as the nature of the industries being regulated in their jurisdiction.

The Review considered a range of options in consultation with agency representatives. A number of options were considered and rejected as outlined below:

- establish an Energy Safety Regulator (electricity, gas and petroleum) in DEIR or DME. This option would result in the separation of gas regulation from mining regulation (if the Energy Safety Regulator were established in DEIR) or would result in ESO being transferred back to DME, contrary to recent government decisions to separate the electricity health and safety regulator from the energy portfolio

- relocate all or some of the Queensland Transport safety regulators (MSQ, Rail Safety Unit and Road Safety) to DEIR. There is no evident case for this option as the transport safety regulators' focus is transport safety not workplace safety. MSQ and Road Safety have major responsibilities for non-workplaces. This option would also complicate national policy reforms if the Transport and Employment and Industrial Relations portfolios were not held by the one Queensland Minister, and
- relocate Radiation Health (Queensland Health) to DEIR. Although there may be some improved alignment with DEIR's radiation responsibilities, Radiation Health's focus is much broader than workplaces and there are significant synergies with their work and that of other Environmental Health and clinical radiation activities in Queensland Health.

Three further options were subject to more detailed analysis, namely:

- Transfer CHEM Services (DES) to DEIR
- Transfer all DME health and safety regulators to DEIR, and
- Establish a health and safety statutory authority comprising WHSQ, ESO, mine safety, petroleum and gas safety, explosives, and CHEM Services.

A summary analysis of these options against the criteria is provided at Appendix 10.

### 5.2.2 CHEM Services relocated to DEIR

This option involves relocating CHEM Services and its functions, including coordination of the administration of the *Dangerous Goods Safety Management Act 2001* and concurrence agency activities, from the DES to DEIR. Other regulatory arrangements would remain the same.

#### ➤ For

- Potential to reduce regulatory costs for business in relation to MHFs, most dangerous goods issues and general workplace health and safety advice, notifications and complaints
- Potential to reduce confusion about concurrent obligations under the *Dangerous Goods Safety Management Act 2001* and the *Workplace Health and Safety Act 1995*
- Potential to better coordinate audit and enforcement strategies
- Potential to make more efficient use of technical and specialist resources
- DEIR already has responsibility for a large component of dangerous goods enforcement by delegation under the *Dangerous Goods Safety Management Act 2001*
- DEIR is responsible for administering hazardous substances legislation, much of which also applies to dangerous goods
- The proposed national Hazardous Materials Standard will combine dangerous goods and hazardous substances standards (although the Productivity Commission recommended that this not occur until 2015)
- Better interstate jurisdictional alignment – no other jurisdiction has the equivalent to CHEM Services in an Emergency Services portfolio, and

- Potential to build critical mass in CHEM Services and build WHSQ inspector competencies and knowledge regarding dangerous goods.

➤ **Against**

- The specialised nature of regulating MHFs requires a different regulatory approach to other health and safety regulation. The specialist inspectorate needs to be maintained or risk a dilution of technical skills, inconsistent approach and loss of credibility with industry
- Some staff in CHEM Services are on section 70 contracts, which are not used in DEIR, and
- Separation of CHEM Services from the Department of Emergency Services' emergency response teams.

➤ **Conclusion**

There is a strong case for organisational change provided remuneration levels, relationships with emergency response units and separate specialist capacity for MHF regulation and associated activities are maintained.

### **5.2.3 All DME health and safety regulators transferred to DEIR**

This option involves relocating the mines, explosives and petroleum and gas health and safety inspectorates from DME to DEIR. Specialist inspectorates would be retained. This is broadly the model used in Western Australia by DOCEP. Other regulatory arrangements would remain the same, although this option could be done in conjunction with the transfer of CHEM Services to DEIR.

➤ **For**

- Achieves full regulatory independence for the mines inspectorate
- Improves access to a broader range of workplace health and safety competencies for the mines inspectorates
- Opportunity for WHSQ to learn from the approaches adopted in the DME inspectorates
- Potential to simplify regulatory compliance for gas and explosive industries
- Potential for improved information sharing and increased uniformity in regulatory strategies and practices
- Potential efficiencies and savings from centralised and shared services
- Reduces the requirement for MOUs between agencies, although internal arrangements would be required, and
- Scope for enhanced career opportunities for smaller inspectorates.

➤ **Against**

- Change may jeopardise reforms currently underway in the mining industry
- Mining stakeholders strongly support the current arrangements as providing the best way to achieve worker safety
- Potential of creating an unresponsive organisation; internal silos may still exist

- Potential risk of staff loss, especially from the mining inspectorate
- Risk of being 'swamped' by DEIR – risk of dilution of technical skills and risk of losing credibility/engagement with industry
- Some mines, explosives and petroleum and gas inspectors are on section 70 contracts, which are not used in DEIR
- Would break links with units of DME that administer land access and mining tenures
- Would break the link between gas safety and gas production and supply (e.g. maintaining safety of gas lines in times of low gas pressure)
- No major drive for change – only issue revolves around perceived regulatory independence
- Ombudsman has undertaken an extensive review of the Mines Inspectorate and has not recommended organisational change, and
- Creates uncertainty with the best portfolio location for Simtars.

### ➤ **Conclusion**

The disadvantages and risks of this option substantially outweigh the likely benefits.

## **5.2.4 New statutory authority**

This option involves establishing an independent statutory authority. Variations of this model exist elsewhere, for example, the United Kingdom's Health and Safety Executive. The Victorian Workcover Authority combines some health and safety regulators in the one agency, although this does not include the energy regulators.

A completely new organisation would bring together WHSQ, ESO, the mines inspectorate, the petroleum and gas inspectorate, the explosives inspectorates and CHEM Services. Specialist inspectorates would be retained.

### ➤ **For**

- Achieves full regulatory independence for the mines inspectorate
- Improves access to a broader range of workplace health and safety competencies for the mines inspectorates
- Opportunity for WHSQ to learn from the approaches adopted in the DME inspectorates
- Potential to simplify regulatory compliance for gas and explosive industries
- Potential for improved information sharing and increased uniformity in regulatory strategies and practices
- Potential efficiencies and savings from centralised and shared services
- Reduces the requirement for MOUs between agencies, although internal arrangements would be required
- Reduces negative perceptions about 'government regulating government'
- Enhanced career opportunities for smaller inspectorates

- Potential to increase the profile of health and safety by branding and marketing the statutory authority
- Opportunity to establish new and unique culture, and
- Opportunity for business associations and unions to be on the governing board.

➤ **Against**

- Requires major organisational change
- Would involve significant establishment costs
- Will jeopardise the future viability of DEIR
- Change may jeopardise reforms currently being progressed in the mining industry
- Mining stakeholders strongly support the current arrangements as providing the best way to achieve worker safety
- Potential of creating a large unresponsive organisation; internal silos may still exist
- Potential risk of staff loss, especially from the mining inspectorate
- Statutory authority may not be as responsive to government priorities
- Need to ensure maintenance of technical skills in industry-specific and risk-specific areas
- Would require the review of staff remuneration arrangements, as staff from merged entities have different entitlements
- Would break links with units of DME that administer land access and mining tenures
- Would break the link between gas safety and gas production and supply (e.g. maintaining safety of gas lines in times of low gas pressure)
- No major drive for organisational change
- Ombudsman has undertaken an extensive review of the Mines Inspectorate and has not recommended organisational change
- Creates uncertainty with the best portfolio location for Simtars

➤ **Conclusion**

The disadvantages and risks of this option outweigh the likely benefits, although this approach would be superior to transferring the DME health and safety regulators to DEIR.

This option may be feasible in the longer term if the identified disadvantages with this model can be addressed. Mining industry stakeholders would need to be satisfied that a new model would retain the benefits of the existing arrangements in terms of industry-specific and risk-specific expertise, and not compromise the sound health and safety outcomes achieved to date. A new authority would need to be genuinely committed to adopting best practice approaches and develop its own culture and values, rather than follow an existing model, such as WHSQ. The relationship between an authority and the government would need to be clearly articulated, particularly in regard to the authority's responsiveness to changing government priorities. The additional costs involved would also need to be addressed.

### **5.2.5 Preferred option**

For the reasons outlined above and in Appendix 10, the Review's preferred option is to transfer CHEM Services to DEIR.

Under the Review's preferred option, there would be three health and safety agencies within the scope of this Review (not including radiation health). These agencies are DEIR (general workplace health and safety, ESO), DME (mines, gas, petroleum, explosives) and Queensland Transport (road, rail, maritime). This compares favourably with the number of equivalent health and safety agencies in other jurisdictions – New South Wales (9), Victoria (5), Tasmania (4), South Australia (3) and Western Australia (3).

## **5.3 Recommendation**

20. CHEM Services (Department of Emergency Services) be transferred to the Department of Employment and Industrial Relations as soon as practical, ensuring that the remuneration levels, relationships with emergency response teams and separate specialist capacity for major hazard facilities regulation and associated activities are maintained.

## Appendix 1: Terms of Reference

### BACKGROUND

Workplace health and safety (WH&S) regulation across government is administered by various government departments including the Department of Employment and Industrial Relations (DEIR), the Department of Mines and Energy (DME), the Department of Emergency Services (DES) and the Department of Transport (DoT).

Relevant legislation includes the *Workplace Health and Safety Act 1995* (and the Codes of Practice under the Act), as well as other legislation with particular application to electrical safety, transport, maritime safety, rail safety, emergency services and mines and energy. DEIR seeks to manage cross-agency issues through a series of Memoranda of Understanding (MOU) with other agencies.

There is a risk that this fragmented approach may compromise the government's ability to effectively administer WH&S regulation to enhance protection in the workplace. There is also the potential that these arrangements may result in the duplication of services, waste of public resources and inconsistent enforcement.

These arrangements are compounded by the Commonwealth's *Safety, Rehabilitation and Compensation Act 1988* which covers private sector organisations that elect to self-insure for workers' compensation. This causes confusion for customers, as well as gaps and duplication in coverage.

The above issues were identified as a major area of concern by business in the Department of State Development's review of regulatory 'hot spots' in 2006. The primary issues raised were the complexity and inconsistency of cross-jurisdictional legislative requirements, and the administration of various WH&S legislation across the Queensland Government.

The 13 April 2007, the Council of Australian Governments agreed to:

- implement a nationally-consistent rail safety regulatory framework, and
- a timetable for achieving national WH&S standards and harmonising elements in principal WH&S Acts.

The recently elected Commonwealth Government has also committed to drive reforms to deliver a nationally consistent workplace health and safety policy.

This Review will ensure that the Queensland Government is well positioned to respond to national developments.

### OBJECTIVES

The objective of this Review is to determine the most effective and efficient organisational arrangements for the administration of the government's WH&S responsibilities to enhance protection in the workplace.

This Review contributes to the following strategic objectives of the Service Delivery and Performance Commission (SDPC) as outlined in section 5 of the *Service Delivery and Performance Commission Act 2005*:

- to meet the expectations of the community about the delivery of government services



- to reduce inefficiencies, duplication and wastage in the delivery of government services
- to improve the accountability of agencies for their delivery of services, and
- to improve the delivery of government services by ensuring agencies use resources effectively and efficiently and adopt best practices.

The report may recommend governance, structural, legislative and other changes to improve the efficiency and effectiveness in the delivery of WH&S services across government.

The final report will be submitted to the Premier in accordance with the *Service Delivery and Performance Commission Act 2005* for subsequent tabling in Parliament.

## SCOPE

The Review will *not* be assessing how well departments are delivering WH&S services. However, concurrent with this Review, the SDPC is undertaking a Service Delivery and Performance Management Review of DEIR. This Review will assess service delivery aspects of that department, including workplace health and safety services.

The Review will *not* be reviewing the various WH&S Acts, but may propose legislative amendments if this is relevant to any revised roles and responsibilities across government.

The Review will be cognisant of national developments in the area of WH&S regulation, in particular, how Queensland can best position itself to negotiate with the Commonwealth Government and other jurisdictions on WH&S reforms.

## METHODOLOGY

A breakdown of the Review methodology is provided below.

<b>Initial information gathering*</b>	<ul style="list-style-type: none"> <li>• Collate documents relating to the administration of WH&amp;S regulation, including lists of relevant legislation, agency role statements, status of current reform projects and MOUs</li> <li>• Obtain a list of key clients / stakeholders</li> <li>• Hold interviews with Directors-General and senior executives to identify key issues to examine</li> <li>• Request submissions from key clients / stakeholders and directly through press advertisements</li> <li>• Obtain information on interstate approaches to roles and responsibilities for WH&amp;S regulation</li> <li>• Request for submissions from Departmental staff and other interested parties through Sectorwide</li> </ul>
<b>Preliminary Analysis</b>	<ul style="list-style-type: none"> <li>• Identify broad issues for further analysis (additional issues may be identified throughout consultation processes)</li> </ul>

<b>Detailed information gathering and consultation</b>	<ul style="list-style-type: none"> <li>• Interview external stakeholders (e.g. peak industry bodies, unions) to identify key issues and proposed solutions</li> <li>• Hold follow-up interviews with Directors-General, senior executives and departmental managers to identify proposed solutions</li> <li>• Forums with regional / district staff to identify key issues and proposed solutions</li> <li>• Undertake a desktop analysis of approaches in other jurisdictions</li> </ul>
<b>Analysis</b>	<ul style="list-style-type: none"> <li>• Analyse information received and results of consultation</li> <li>• Analyse submissions received</li> <li>• Prepare Issues Papers, including the development of options and recommendations to achieve the objectives of this Review</li> <li>• Provide opportunity for Directors-General and senior executives to comment on options and recommendations</li> </ul>
<b>Reporting</b>	<ul style="list-style-type: none"> <li>• Prepare a review report for the consideration of the SDPC Commissioners</li> </ul>

\* Some of these activities will commence prior to the formal commencement of the review

## RESOURCES

The SDPC will dedicate the following resources to this review:

Paul Sheehy	Review Team Leader	40%
Lyn Botsman	Review Team Member	100%
Victoria Thomson	Review Team Member	100%
Susan Edwards	Project Support	30%

A nominee from DEIR will be seconded as a Principal Review Officer to the review.

Mr Tony Hayes (Executive Director, SDPC) will provide oversight and direction for the review.

The SDPC will form a Steering Committee to provide strategic direction to this review. The Steering Committee will comprise the Chairman, SDPC (Chair), the Director-General, DEIR, and an executive nominee from the Department of the Premier and Cabinet. The Steering Committee will also oversee the abovementioned SDPC review of DEIR.

It is expected that the Steering Committee will meet three times at key milestones during the review.

A Senior Executive Reference Group will be formed comprising senior executives of DEIR, DME, DES, DoT and Queensland Health to provide expert input throughout the review.

Office accommodation for the review team will be provided by the SDPC.

Regional visits will be undertaken to consult key stakeholders in areas outside Brisbane.

All resources for this review will be provided from within existing budgets. The SDPC will fund all non-labour costs for the review and the costs for SDPC staff. DEIR will fund all salary and salary related on-costs for their nominee.

## ROLES AND RESPONSIBILITIES

SDPC Chairman will:	<ul style="list-style-type: none"> <li>• provide strategic oversight and direction to the review team</li> <li>• facilitate communication and negotiation of key issues at the executive level</li> <li>• ensure quarterly reports to the Premier reflect current status of the review</li> </ul>
SDPC Commissioners will:	<ul style="list-style-type: none"> <li>• ensure the review is conducted in accordance with the SDPC Act</li> <li>• monitor the progress of the review at key milestones and provide feedback to the review team</li> <li>• review, comment on, and approve the review report</li> <li>• ensure the report's recommendations support improvements in the effective and efficient delivery of services</li> </ul>
Review Leader will:	<ul style="list-style-type: none"> <li>• plan and manage the review, including:</li> <li>• manage the review team</li> <li>• recommend priority areas for focus, data collection and analysis</li> <li>• support understanding of and adherence to SDPC Code of Conduct by all team members</li> <li>• allocate resources internally to the review to ensure timeframes are met</li> <li>• manage the reporting process to executive management</li> <li>• adhere to appropriate approval and sign off processes</li> <li>• liaise regularly with Chairman and Executive Director on progress with the review</li> <li>• support the appropriate training and guidance of staff</li> <li>• provide quality assurance support to teams to ensure that reviews adhere to best practice principles.</li> </ul>
Review Team members will:	<ul style="list-style-type: none"> <li>• conduct the review in accordance with the approved work program and the instructions of senior management</li> <li>• provide advice to the Review Leader on the conduct of the review</li> <li>• work effectively across departments involved in the review</li> <li>• communicate effectively with clients and stakeholders</li> <li>• adhere to the timeframes and reporting requirements for the review</li> <li>• adhere to the SDPC Code of Conduct</li> </ul>

## **COMMUNICATION AND CONSULTATION**

Communication between the relevant departments and the SDPC will occur continuously throughout the review. The review team will meet with senior executives and managers in Brisbane and regional areas.

As part of the consultation process, a general invitation for written submissions will be made across the sector through *Sectorwide*.

Consultations will be held with key stakeholders, and invitations sent to provide submissions to the review. Submissions will also be sought through press advertisements.

The final report will be provided to the relevant Directors-General for consideration and comment before presentation to the SDPC Commissioners.

## **RISK ASSESSMENT & MANAGEMENT**

A number of risks applicable to each stage of the review have been identified and strategies developed to mitigate these risks if they were to occur.

## **REVIEW APPRAISAL**

The SDPC has developed a framework to evaluate all SDPC reviews. As part of this framework, feedback will be sought from relevant senior executives, agency nominees and departmental stakeholders on the review process and outcomes.

## **REVIEW TEAM**

- Paul Sheehy, Director, SDPC (Review Leader)
- Lyn Botsman, Principal Review Officer, SDPC
- Gerald Schmidt, Principal Review Officer, SDPC
- Victoria Thomson, Director Equipment Safety and Licensing, Electrical Safety Office
- Susan Edwards, Project Coordinator, SDPC

## Appendix 2: Consultation List

### Meetings – Clients/Stakeholders

Organisation	Persons Consulted
Australian Industry Group	Chris Rodwell, Director Queensland Aaron Johnstone, Manager Policy and Public Affairs
Brisbane Marine Pilots	Steve Pelecanos, Chairman
Caltex	Liam Tobin, General Manager
Commerce Queensland	Paul Bidwell, General Manager Nick Behrens, State Manager Policy Stephen Nance, Manager Workplace Relations
Construction, Forestry, Mining, Energy Union – Mining Division – Construction and General Division	Stewart Vaccaneo, District Vice President Greg Dalliston, Industry Safety and Health Representative Tim Whyte, Industry Safety and Health Representative Michael Ravbar, State Secretary Andrew Ramsay, Health and Safety Coordinator
Department of Consumer and Employment Protection (WA)	Albert Koenig, Executive Director Energy Safety Nina Lyhne, Executive Director Worksafe Malcolm Russel, Executive Director Resource Safety
Electrical Safety Board	Jack Camp, Commissioner for Electrical Safety
Electrical Trades Union Queensland Branch	Richard Williams, State Secretary Alan Hicks, Organiser
Energex	Terry Effeney, Chief Executive Officer Chris Arnold, General Manager Network Performance Susan Keogh, General Manager Human Resources
Energy Safe Victoria	Ken Gardner, Director
Maritime Union of Australia	Mick Carr, Branch Secretary
Origin Energy	Barry Duckworth, Manager LP Gas Policies and Procedures Julie Russell, National Manager HSE Capabilities John Sherlock, Safety and Skills Development LPG Monica Moutos, HSE Manager Generation
Queensland Master Builders Association	John Crittall, Director Construction Policy

Organisation	Persons Consulted
Queensland Resources Council	Michael Roche, Chief Executive Robert Wilson, Assistant Director Health, Safety and Skills Initiatives Mining company representatives
QR	Graeme Allinson, Chief Risk Officer Greg Ford, General Manager Safety
Workplace Health and Safety Board	Vince O'Rourke, Chair
Worksafe Victoria	Pieter Rienks, Director Hazard Management

### Meetings – Government Agencies

Department	Persons Consulted
Department of Emergency Services	Jim McGowan, Director-General Greg Coughlin, Director Human Resources Branch Harry Pirvics, Director CHEM Services
Department of Employment and Industrial Relations	Barry Leahy, Deputy Director-General Simon Blackwood, A/Executive Director WHSQ Peter Lamont, Executive Director ESO Jim Carmichael, Senior Director Service Delivery, WHSQ Paul Goldsbrough, Senior Director Policy, WHSQ Tim Eldridge, Director Programs, WHSQ Colin Rowntree, Director Legal and Prosecution Services, WHSQ David Spann, Director Statewide Services, WHSQ Barry Dieckmann, Director Compliance, ESO Tony Leverton, Director Policy, ESO
Department of Mines and Energy	Dan Hunt, Director-General Stewart Bell, Executive Director Safety and Health Roger Billingham, Chief Inspector Mines (Metalliferous and Quarries) John Fleming, Chief Inspector Petroleum and Gas Gavin Taylor, Chief Inspector Mines (Coal) Bob Sheridan, Chief Inspector of Explosives Geoff Downs, Deputy Chief Inspector of Explosives
Environmental Protection Agency	Dr Faiz Khan, Manager Waste and Chemicals Reporting Noleen Lucjan, Principal Workforce Management Officer

Department	Persons Consulted
Queensland Transport	Bruce Wilson, Director-General Captain John Watkinson, General Manager, MSQ Julie Bullas, Director Rail Safety Mike Stapleton, Director Strategic Policy Werner Bundeschuh, Director Safety Standards, MSQ John Kavanagh, Director Compliance, MSQ Barry Ferguson, Acting Director Vehicle and Road Use

Meetings were also held with representatives of managers and inspectors from the Department of Emergency Services, Department of Employment and Industrial Relations, Department of Mines and Energy and Queensland Transport.

## Submissions

Submissions were received from the following organisations:

Organisation
Australian Industry Group Australian Maritime Officers Union – Port Services Division BHP Billiton Mitsubishi Alliance Construction, Forestry, Mining, Electrical Union – Mining Division Commerce Queensland Department of Employment and Industrial Relations Department of Mines and Energy Department of Primary Industries and Fisheries Department of Tourism, Regional Development and Industry Electrical Trades Union – Queensland Branch Energex Environmental Protection Agency Plastics and Chemicals Industries Association Q-Comp – The Workers' Compensation Regulatory Authority Queensland Audit Office Queensland Council of Unions Queensland Rail Queensland Resources Council Queensland Transport Shipping Australia Limited

## Appendix 3: Issues Presented to the Review

PERCEIVED PROBLEM		RESPONSE
<b>Mining</b>		
1.	Mining inspectors have no expertise to deal with an incident in a brickworks on a mine site.	This concern may reflect an incident at Dinmore in 1993. Brickworks (and the winning of clay for brickworks) are not covered by the <i>Mining and Quarrying Safety and Health Act 1999</i> (see section 10 (2)(a)).
2.	Asbestos removal in a Mount Isa mine can be undertaken by persons without an asbestos licence.	The <i>Mining and Quarrying Safety and Health Regulation 1999</i> (s.141) requires asbestos to be removed by an 'asbestos removalist' in accordance with the NOHSC Code of Practice for the Safe Removal of Asbestos. The WH&S regulation also requires compliance with this Code. 'Asbestos removalist' is not defined in the M&QSHA.
3.	Mining inspectors have little or no expertise in managing asbestos removal.	The removal of asbestos from buildings does not appear to be a significant issue in the mining industry. DEIR assistance could be called on if needed. The Chief Inspector has authority to issue directives if deemed necessary.
4.	Quarries that are not on gazetted mining leases are WHSQ and local authority responsibility.	The <i>Mining and Quarrying Safety and Health Act 1999</i> covers hard rock quarries. There is no evidence that the demarcation between hard rock quarries and other quarries has created significant problems.
5.	A processing plant on a mine site is the responsibility of DME; the same plant elsewhere is the responsibility of WHSQ.	Different regulators and regulatory regimes apply, although the number of businesses affected would be small. Industry and employee representatives have not identified this as a concern. Government needs to be confident that equivalent health and safety outcomes are being achieved.
6.	Major Hazard Facilities on mine sites are not covered by the Dangerous Goods Safety Management Act (DGSMA).	This currently applies to two sites – Mt. Isa and Phosphate Hill. There is a possibility that this could increase with the proposed broadening of the scope of the Major Hazard Facility standard. Government needs to be confident that equivalent health and safety outcomes are being achieved.



<b>PERCEIVED PROBLEM</b>		<b>RESPONSE</b>
<b>Gas</b>		
7.	If a gas bottle at a workplace causes an incident, it is investigated by WHSQ inspectors; however if mains gas is the cause then it is DME's responsibility.	The Gas and Petroleum Inspectorate would deal with a gas bottle incident at a workplace if it related to issues such as the integrity of the valve or the filling of the cylinder. WHSQ has general workplace health and safety responsibilities, e.g. storage.
8.	There is fragmentation and a lack of clearly defined boundaries in the industrial gas industry, with nine separate departments being responsible, including: <ul style="list-style-type: none"> <li>• Multiple audits / inspections</li> <li>• Possibility for multiple notices to be issued for the same topic, and</li> <li>• The need for complex operational management systems.</li> </ul>	Some industries are more affected by the multiple regulations and regulators. Large, complex businesses dealing with multiple high risk activities will be most affected.
<b>Explosives</b>		
9.	Multiple agencies are responsible for explosives.	DME has prime responsibility for regulating explosives. DEIR would be involved in an explosive-related incident at a workplace. MOU applies.
10.	Licensing and storage of explosives is regulated by DME; use of explosives at workplaces is within WHSQ's responsibility.	Refer above comment.
<b>Dangerous Goods</b>		
11.	The separate regulation of dangerous goods/hazardous substances creates major difficulties (not transport).	Being addressed nationally.
12.	There are many agencies responsible for administering the dangerous goods legislation.	Dangerous goods are a very broad concept. CHEM Services has delegated responsibilities under the DGSMA to appropriate agencies. MOUs are in place. CHEM Services coordinates audits with other agencies. There is scope to improve this area as a consequence of combining dangerous goods and hazardous substances.

<b>PERCEIVED PROBLEM</b>		<b>RESPONSE</b>
<b>Maritime</b>		
13.	Manual handling issues on ships are dealt with by maritime safety inspectors who do not have ergonomic training or experience.	Marine safety inspectors do not have legislative responsibility for manual handling issues on ships. The WH&S Act applies to manual handling issues on ships.
14.	Crane operators on ships at sea do not require certification under WHS laws; however they do require certification to operate the same crane once in port.	The WH&S regulation makes no distinction between 'ships at sea' and in port.
15.	There is a lack of clarity around responsibility for workplace health and safety on ships at sea.	This is WHSQ's responsibility under the WH&S Act.
16.	DEIR misunderstands their obligations to maritime workers and wrongly regards WH&S on commercial vessels as a responsibility of MSQ.	This is WHSQ's responsibility under the WH&S Act.
<b>Rail</b>		
17.	Trackwork that involves manual handling/tools is outside the expertise of rail safety inspectors (proposed rail safety).	There is joint jurisdiction between Rail Safety and WHSQ on this issue. MOU needs to address responsibility.
18.	Rail safety inspectors will be required to investigate general workplace health and safety incidents for which they have no expertise (proposed rail safety).	This will remain a WHSQ issue. The duty of care under the Rail Safety Bill is confined to prescribed railway operations which are the operation or movement of rolling stock on a railway track or an activity that directly affects this (e.g. constructing a railway track and associated works).
19.	Manufacturers, suppliers and contractors of cranes working in rail goods yards will be subject to investigation by rail safety inspectors who have no expertise in these matters.	This will remain a WHSQ issue.

	PERCEIVED PROBLEM	RESPONSE
20.	Rail safety inspectors will be responsible for the construction of building on rail land for which they have no expertise.	This will remain a WHSQ issue.
21.	New rail safety legislation – different rules will apply for alcohol management.	There are no alcohol management rules in WH&S Act or WH&S regulation.
<b>General</b>		
22.	Departments will be 'captured' by industry if they are required to promote the industry as well as regulate it.	There is a risk to government in this area. Departments need to have clear governance arrangements in place to address this.
23.	There are some issues, such as fatigue, that a number of agencies have in common.	Departments would benefit by sharing information/learnings on areas of common interest.
24.	Departments have different approaches to achieving workplace health and safety outcomes.	Government needs to be confident that different approaches are based on the types of industries/activities being regulated. There does not appear to be a shared whole-of-government approach between agencies.
25.	Willingness to provide advice – departments have different approaches.	Refer above comment.
26.	DEIR 'just want to prosecute'.	Refer above comment.
27.	Rail safety inspectors are 'prosecution shy'.	Refer above comment.
28.	It is not clear who incidents should be reported to.	There is scope to streamline reporting requirements, particularly for larger more complex businesses.
29.	Incidents have to be reported to more than one department who have different reporting requirements.	Refer above comment.
30.	For workplace health and safety administration to be effective it needs to be the agency's core business.	Not necessary – all departments have multiple responsibilities.

<b>PERCEIVED PROBLEM</b>		<b>RESPONSE</b>
31.	Only one agency should negotiate with the Commonwealth Government on workplace health and safety reforms.	Not feasible – there are too many complex, specialised issues.
32.	Strong support for national reforms but concern that this will lead to reduced consistency at a state level.	There is scope to strengthen governance arrangements at a state level to ensure state consistency in parallel with national reforms.
33.	Businesses need to liaise with a number of departments on workplace health and safety issues.	Some industries are more affected by the multiple regulations & regulators. Large, complex businesses dealing with multiple high risk activities will be most affected.
34.	At times people get the 'run around' between different agencies.	Some examples of this are evident – referrals between departments could be improved.
35.	If there is an incident, more than one agency may want to investigate.	Incident response in most areas seems to be well managed between departments. Identifying lead/support roles are important.
36.	Business is subject to multiple inspections by different departments.	Some industries are more affected by this – depending on nature & complexity of business. Scope for improvement for specific industries.
37.	Departmental roles were unclear after the Rocklea fire (asbestos).	New agreement to address this is being developed (DEIR, DES, EPA and QH).
38.	Agencies are competing for limited skilled staff in some areas.	This is an economy-wide issue. May be scope to improve coordination. Need to maximise use of skilled staff in 'front line' work.

## Appendix 4: Timelines for National Regulatory Reforms

DATE	ACTIVITY
May 2008	Workplace Relations Ministers' Council signs the <i>Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety</i> .
June 2008	Ministerial Council on Energy considers developing an energy technical and safety regulation harmonisation plan.
July 2008	Productivity Commission final report on arrangements for the regulation of chemicals and plastics in Australia to COAG.
July 2008	Australian Transport Council to consider national approaches for rail safety regulator, marine safety standards, and registration and licensing of heavy vehicles.
August 2008	Australian Safety and Compensation Council reports to Workplace Relations Ministers' Council on recommendations for the updating of the Australian Explosives Code.
October 2008	Independent advisory panel reports to Workplace Relations Ministers' Council on matters concerning duties and offences in relation to the occupational health and safety laws.
December 2008	Ministerial Council on Mineral and Petroleum Resources reports to COAG on endorsement of final strategies and the merits of establishing a national regulatory authority and related recommendations regarding the National Mine Safety Framework.
December 2008	Productivity Commission draft report to COAG on the regulation of crude oil and natural gas projects that involve more than one jurisdiction.
December 2008	All mainland jurisdictions to pass the model rail safety legislation developed by the National Transport Commission.
January 2009	Independent advisory panel reports to Workplace Relations Ministers' Council on matters such as scope and coverage, workplace consultation, and enforcement and compliance in relation to the occupational health and safety laws.
March 2009	Australian Transport Council reports to COAG on options for implementation of a single approach to maritime safety for commercial vessels.
April 2009	Productivity Commission final reports to COAG on the regulation of crude oil and natural gas projects that involve more than one jurisdiction.

## **Appendix 5: Health and Safety Regulators Council – Terms of Reference**

### **Preamble**

Safeguarding the health and safety of workers, other people at workplaces, and the community generally are key roles for a number of Queensland Government departments.

The relevant departments deal with a wide range of industries and risks. As such, there are inevitable areas of common interest and joint-jurisdiction on health and safety matters.

All departments are involved in national health and safety reforms. The breadth of these reforms is extensive, and the pace of change is accelerating.

There is scope for improved coordination of health and safety regulatory activities at a strategic level across government.

### **Role**

To coordinate reforms to health and safety regulation and the administration of health and safety regulation across government, and to enhance other aspects of communication and coordination across health and safety regulators.

To advise Cabinet on key whole-of-government health and safety issues.

It is noted that Ministers and chief executives will remain accountable for their areas of responsibility. The Council will ensure well informed decision making by Cabinet, Ministers and chief executives on strategic areas of common interest.

### **Chair and Secretariat**

The Director-General Department of Employment and Industrial Relations will chair the Council. A secretariat, independent of any individual work unit with responsibilities for the administration of workplace health and safety regulation, will be established by the Chair.

### **Membership**

Membership will be made of chief executives/senior executives of:

- Department of Employment and Industrial Relations (workplace health and safety, electrical safety)
- Department of Mines and Energy (mines, gas & petroleum, explosives)
- Department of the Premier and Cabinet
- Queensland Transport (rail, road and maritime safety)
- Queensland Treasury

Other agencies (e.g. Queensland Health, Radiation Health) may be invited to Council meetings to discuss specific issues.

### **Specific Tasks**

To identify the key issues of common interest to health and safety regulators across government.

To comment on all submissions to national health and safety reviews prior to them being submitted to Cabinet for approval, with these comments being incorporated in the relevant Cabinet Submission.

To ensure a consistent Queensland Government position in negotiations at a national level on key health and safety reforms of common interest to health and safety regulators across government.

As part of the reform process, to ensure, as far as is practicable, consistent approaches to equivalent regulatory provisions within Queensland health and safety legislation.

To report to Cabinet as required on key issues in the national health and safety regulatory reforms.

To implement the recommendations in the Cabinet-approved SDPC Review Report for which the Council is responsible, and monitor the recommendations for which individual departments are responsible.

To identify and implement consistent 'best practice' approaches to health and safety regulation and the administration of regulation across government.

To consider all reports of relevant Coronial Inquiries, Ombudsman's Reports and other independent health and safety reviews to ensure that deficiencies identified in one area of regulatory activity are remedied across government.

To identify opportunities to optimise the use of health and safety regulatory resources across government.

## Appendix 6: Overview of Dangerous Goods Administration

DG CLASS	1	2.1 <sup>+</sup>	2.2 <sup>+</sup>	2.3 <sup>+</sup>	3 <sup>+</sup> (and combustible liquids)	4 <sup>+</sup>	5 <sup>+</sup>	6.1 <sup>+</sup>	6.2	7	8	9 <sup>+</sup>
HEAD OF POWER and MAIN ENFORCEMENT AGENCY	Explosives Act and DGSM Act DME (Explosives Inspectorate)	Gas Act and DGSM Act DME (Petroleum & Gas)	DGSM Act DEIR <sup>++</sup> (WHSQ) [non-chemical coverage]		DGSM Act Local Government	DGSM Act DEIR (WHSQ)			Health Act Qld Health	Radiation Safety Act Qld Health (Radiation Health)	DGSM Act DEIR (WHSQ)	
COORDINATION	Dangerous Goods Safety Management (DGSM) Act DES (CHEM Unit)											
RELATED ACTIVITIES	Environmentally Relevant Activities – Environmental Protection Act – EPA DG transport – transport operations legislation** – Queensland Transport											

### DG Classes

Class 1 Explosives	Class 3 Flammable and combustible liquids	Class 6.2 Infectious substances
Class 2.1 Flammable gases	Class 4 Flammable solids, substances liable to spontaneous combustion, and substances that in contact with water emit flammable gases	Class 7 Radioactive material
Class 2.2 Non-flammable, non-toxic gases	Class 5 Oxidising substances and organic peroxides	Class 8 Corrosive substances
Class 2.3 Oxidising gases	Class 6.1 Toxic substances	Class 9 Miscellaneous dangerous goods

- + For gases other than LP gas, natural gas and coal gas, enforcement occurs mainly (as indicated) under the DGSM Act.
- ++ With support from DME on technical issues (e.g. gas reticulation). DEIR jurisdiction is limited to coverage of non-technical issues (e.g. cylinder storage).
- \* Materials that are explosives (but not Class 1 dangerous goods) are also regulated under the Explosives Act by the Explosives Inspectorate.
- \*\* For transport of materials other than explosives – which is regulated under the Explosives Act by the Explosives Inspectorate.



## Appendix 7: Summary of Agencies and Legislation

### CHEM Services

Chemical Hazards and Emergency Management Services (CHEM Services) is responsible for coordinating the administration of the *Dangerous Goods Safety Management Act 2001* (DGSM Act). The objective of the Act is to protect the safety of persons and prevent harm to property and the environment from hazardous materials by establishing requirements for the safe storage and handling of dangerous goods and combustible liquids; the safe operation of major hazard facilities; and giving advice and help in hazardous materials emergencies. With some exceptions, the Act applies to everyone who as a result of the storage or handling of hazardous materials at a place may affect the safety of persons or harm property or the environment.

CHEM Services inspect and audit locations to ensure owners and occupiers of the state's 32 MHFs systemically consider all possible hazardous materials incident scenarios and implement suitable controls to prevent or minimise risk. They also investigate major accidents, near misses and complaints; and provide advice to duty holders. Due to their significant worker, community and environment risk potential, CHEM Services also audit the top end of the approximately 2500 large dangerous goods locations across the state.

The Department of Emergency Services, through CHEM Services, holds concurrence status for the approval of development applications identifying potential MHFs. CHEM Services also assist local government authorities by offering advice about their own dangerous goods facilities and changes to land use applications, and provides regulatory and technical advice and training to assist WHSQ, DME and local government authorities to deliver their respective responsibilities under MOUs. As part of their role of overseeing a whole-of-government approach to the safe management of hazardous materials, the department also chairs the Inter-Departmental Hazardous Substances Coordinating Committee, which was established shortly after the August 2005 Binary Industries fire at Narangba<sup>26</sup>.

Issues impacting on CHEM Services' future delivery of its workplace health and safety responsibilities include:

- integration of the separate national standards for dangerous goods storage and the control of workplace hazardous substances into the National Standard for the Control of Workplace Hazardous Chemicals
- review of the current national MHF Standard and MHF Code that will potentially increase the number of facilities classified as MHFs from 32 to approximately 40 Tier 1 (large) MHFs and 60 Tier 2 (small) MHFs by 2010, and
- implementation of the United Nations' Globally Harmonised System for the Classification and Labelling of Chemicals (GHS).

<sup>26</sup> In August 2005 a fire at the Binary Industries pesticide manufacturing and storage plant located in the Narangba Industrial Estate resulted in surrounding environment contamination and community concerns about the potential health impacts.

## Electrical Safety Office (ESO)

The *Electrical Safety Act 2002* establishes the legislative framework for electrical safety from generation to point of use and seeks to eliminate the human cost to individuals, families and the community of death, injury and destruction that can be caused by electricity. The Act aims to prevent persons from being killed or injured by electricity; and prevent property from being destroyed or damaged by electricity. To achieve its purpose, the legislation places obligations to ensure electrical safety on a range of people, including electricity entities (e.g. Energex and Ergon Energy), employers, designers, manufacturers, importers, installers and suppliers of electrical equipment and workers. As such, the legislation has wide coverage across the vast majority of Queensland locations which is reflected in the ESO's goal – electrically safe homes, workplaces and other environments.

ESO's major activities are summarised below:

- develop the legislative framework and standards for electrical safety
- deliver inspection, advisory and enforcement activities to promote compliance with electrical safety laws
- investigate electrical safety incidents, including those in the general community
- provide information, education and training activities to assist industry, workers and the community to reduce the risk of electrical-related injury and disease
- issue occupational and business licensing for electrical workers and contractors, approve certain types of electrical equipment before sale and manage other accreditation systems under the legislation, and
- administer the energy efficiency labelling and equipment energy performance standards provisions of the *Electricity Act 2002* under delegation from the Department of Mines and Energy.

Issues impacting on the ESO's future ability to deliver its workplace health and safety responsibilities include:

- national review of the electrical equipment safety system to ensure a consistent and modern regulatory approach for electrical equipment sold to consumers
- national review of occupational and trade licensing for electrical work coordinated by the Business Regulation and Competition Working Group reporting to COAG
- outcomes of an internal review of ESO's enforcement and prosecution framework and a resulting increased focus on providing information and advice to obligation holders, and
- the emergence of energy companies, rather than traditional gas only or electricity only and energy industry participants' support for a single national energy safety regulator.

## Workplace Health and Safety Queensland

The purpose of the *Workplace Health and Safety Act 1995* is to prevent a person's death, injury or illness being caused by a workplace, by a relevant workplace area, by work activities or by plant or substances used at a workplace. The Act binds all persons, including the state and applies to nearly all workplaces; the major exception being mines and petroleum leases. A workplace is defined as any place where work

is, or is to be, performed by a worker; or a person conducting a business or undertaking work. It includes volunteer work.

To achieve its purpose, the legislation places obligations on a range of people, including persons who conduct businesses or undertakings, designers and manufacturers of plant, principal contractors, project managers and clients of construction work, and on workers.

The *Queensland Workplace Health and Safety Strategy 2004–2012* is the principal driver of WHSQ activity. Specific industry and injury action plans support the strategy by providing further direction on compliance campaigns. The strategy's targets align with those set in the *National Occupational Health and Safety Strategy 2002–2012*, that is:

- a significant, continual reduction in the incidence of work-related fatalities with a reduction of at least 20% by 30 June 2012, and
- reduction in the incidence of workplace injury by at least 40% by 30 June 2012.

WHSQ's major activities are summarised below:

- develop the legislative frameworks and standards for workplace health and safety
- deliver inspection, advisory, investigation and enforcement activities to promote compliance with workplace health and safety laws
- provide information, education and training activities to assist industry, workers and the community to reduce the risk of work-related injury and disease
- manage registration, approval and accreditation systems under the legislation, and
- monitor and enforce compliance with the *Dangerous Goods Safety Management Act 2001* at approximately 2500 large dangerous goods locations across Queensland.

Issues impacting on WHSQ's future delivery of its workplace health and safety responsibilities include:

- national review into model occupational health and safety laws
- harmonisation of occupational health and safety arrangements and standards
- expectations around WHSQ's role in public safety, and
- an internal review of WHSQ's enforcement/prosecution framework and a resulting increased focus on providing information and advice to obligation holders.

### **Explosives Inspectorate**

The Explosive Inspectorate is responsible for administering the *Explosives Act 1999* which can be described as cradle to grave explosive safety and security legislation. The legislation encompasses all aspects of handling explosives, including moving explosives in or out of the state, possessing, manufacturing, transporting, storing, selling and using; and seeks to ensure only appropriate persons and firms are involved in these roles to achieve a reasonable level of safety.

Explosives include anything that is manufactured or used to produce an explosion or pyrotechnic effect, such as ammunition, detonators, gunpowder and fireworks. Although about 95% of explosives are used in Queensland mine and quarry

workplaces for blasting purposes, the explosive inspectors also regulate public safety through their involvement with fireworks, ammunition, reloading powders, flares and even toys such as rockets, caps for toy guns, and party novelties.

In June 2004, COAG agreed to a set of principles for the control of security sensitive ammonium nitrates (SSAN). Over 1M tonnes of SSAN are handled in Queensland per annum, with the vast majority being used in the mining industry. A small amount has agricultural application<sup>27</sup>. SSAN is a declared explosive and the Explosive Inspectorate is the Queensland Government's lead agency for developing and implementing SSAN management.

The Explosives Inspectorate's major activities are summarised below:

- develop standards for the safe manufacture, storage, transportation, handling and use of explosives
- provide advice to government, industry and the community on explosive technical and safety issues
- monitor explosives activities to ensure compliance with standards and investigate explosives incidents
- issue authorities under the legislation, including conducting the required security checks
- administer government reserves for the storage and distribution of explosives used by both the private and public sectors, and
- provide for the collection and safe destruction of unwanted explosives and related material.

Issues impacting on the Explosive's Inspectorate's future delivery of its workplace health and safety responsibilities include:

- review and updating of the Australian Explosives Code, and
- national harmonisation of the SSAN regulations and regulatory approaches.

### **Mines Inspectorate**

The Mines Inspectorate administers the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*. In summary, the objective of both Acts is to protect the safety and health of persons at mines and from mining operations and to ensure the risks of injury or illness from mining operations are at an acceptable level. The *Coal Mining Safety and Health Act 1999* applies to all coal mining operations (including the recovery of coal seam gas) and onsite activities related to coal mining operation (e.g. exploration, extraction, processing and treatment, and installing and maintaining equipment for any of these purposes). The *Mining and Quarrying Safety and Health Act 1999* applies to mines (other than coal mines), mining operations (including administration buildings and accommodation) and to quarries. The Act specifically excludes winning clay (the process of extracting clay from a quarry), the manufacture of bricks and other ceramics, and where rock does not need to be broken to enable it to be excavated (e.g. sand and gravel).

<sup>27</sup> *Queensland Government Submission to Productivity Commission Draft Review on Chemicals and Plastics Regulation*, p.15.

The objectives are achieved by placing safety and health obligations on everyone who may affect the safety or health of others including mine workers, coal mine operators, site senior executives, contractors, and designers and manufacturers of plant used at a mine. The Acts will apply to Queensland's approximately 700 mines, varying in size from large industrial sites which employ over 3000 people to small mines in isolated parts of the state with only one or two workers.

Inspectors, led by the Chief Inspector Mines (metalliferous and quarries) and the Chief Inspector Mines (coal), perform the following activities:

- develop the legislative framework and standards for mine safety
- deliver inspection, auditing, advisory, enforcement and investigation activities to promote compliance with mine safety laws
- manage occupational certifications systems under the legislation
- check that safety and health management systems and procedures are in place to control risk to persons affected by mine operations, and
- establish industry competencies and accepting individuals' competencies through involvement in the Board of Examiners and consultative arrangements under the Acts.

Notably, the legislative frameworks also provide for the appointment of worker representatives to perform a range of inspection, assessment, investigation and consultative functions and exercise powers, including issuing directives.

Consistent with the recommendations of the Mining Warden in the Inquiry into the Moura incident in 1994, the mines inspectorate is regularly reviewed. In 2004, the then Minister for Natural Resources and Mines commissioned an independent review of the Mines Inspectorate to ensure the structure, skills and resources were in place to deliver an efficient, effective and relevant inspectorate. Implementation work has been underway since the vast majority of the review's recommendations were accepted by the Queensland Government in late 2005. The reform program sits around three key themes – skills and structure; improving performance; and the inspectorate and stakeholders. Several of the recommendations relate to broadening the inspectorates' focus across occupational health and safety skills, in line with general government and industry practice.

Other issues potentially impacting on the Mines Inspectorate's future delivery of its workplace health and safety responsibilities include:

- finalising the implementation of the recommendations of the review of the Queensland Mines Inspectorate, including rolling out a compliance policy and legislative changes
- implementation of the accepted recommendations of a review of the Queensland Mines and Quarries Annual Safety Performance and Health report
- implementation of National Mine Safety Framework strategies as agreed by the Ministerial Council on Mineral and Petroleum Resources, and
- recommendations of the Queensland Ombudsman's current investigation into the mining inspectorate.

## Simtars

Simtars (Safety in mines testing and research station) is a business unit within DME. Established by the Queensland Government in 1989 Simtars provides research, consulting, testing, certification and training services.

## Petroleum and Gas Inspectorate

The Petroleum and Gas inspectorate is responsible for administering the safety and health components of the *Petroleum and Gas (Production and Safety) Act 2004*. The purpose of this Act is to facilitate and regulate the carrying out of responsible petroleum activities and the development of a safe, efficient and viable petroleum and fuel gas industry. The Act regulates operating plant which is broadly defined to include exploration facilities, pipelines, processing plants and even end-use. For crude oil, operating plant ends at the refinery gate. For gas (both natural and liquid petroleum) operating plant includes the end use appliance (e.g. domestic stove, BBQ or city council bus).

As such, the legislation covers petroleum exploration and production activities, pipeline licensing tenure regimes, competition, responsible land and resource management, and safety and technical activities. In line with the broad legislative framework, the inspectorate is concerned with a range of industry participants across exploration, production, transmission, distribution, LPG storage and distribution, and downstream use in commercial, industrial and domestic environments. Whilst safety is the main focus the inspectorate is also concerned with security of supply, and petroleum and fuel quality and measurement.

Inspectors led by the Chief Inspector perform the following activities:

- audit and inspect petroleum and gas installations and drilling operations to ensure compliance with safety management plans and other safety provisions of the Act
- investigate petroleum and gas incidents, including those in the general community
- issue approvals for large or complex petroleum and gas operations, and
- deliver education programs to people involved in the gas industry, senior emergency service personnel, TAFE college students and the community.

Issues impacting on the Petroleum and Gas Inspectorate's future delivery of its workplace health and safety responsibilities include:

- recent and expected continued growth in coal seam gas production and use of gas in power generation
- increased numbers of petroleum wells drilled and pipelines constructed to support petroleum and gas exploration and production
- the Productivity Commission's current inquiry into the regulation of the upstream petroleum sector and COAG's commitment to reform upstream petroleum regulation, and
- the emergence of energy companies, rather than traditional gas only or electricity only and energy industry participants' support for a single national energy safety regulator.

## Maritime Safety Queensland

The *Transport Operations (Marine Safety) Act 1995* (TOMS Act) and the *Transport Operations (Marine Pollution) Act 1994* apply to the almost 6000 commercial and 215 000 recreation vessels connected with Queensland. In practice, this is all vessels excluding large ships (such as bulk carriers), ships on interstate or international voyages, and all defence ships. Recreational ships comprise about 96% of this fleet. MSQ's role in administering both Acts is demonstrated in their vision of 'safer, cleaner seas – to lead the delivery of maritime safety, services, and the protection of the marine environment from ship sourced pollution'.

The objective of the TOMS Act is to provide a system that achieves an appropriate balance between regulating the maritime industry to ensure marine safety; and enabling the effectiveness and efficiency of the Queensland maritime industry to be further developed. The Act places obligations on ship designers, ship builders, marine surveyors, ship owners (including operators), ship masters, crew, marine pilots and others involved in the operation of a ship to ensure seaworthiness and other aspects of marine safety. The general safety obligation can be discharged by complying with relevant standards, or in other appropriate ways chosen by the person on whom the obligation is imposed. MSQ's marine safety jurisdiction is related primarily to the seaworthiness and safe operation of the vessel.

Shipping inspectors deliver services in three key outcome areas:

- safety of vessels and their operation – vessel design and operator competence
- safety of vessel movement and mooring – vessel traffic management and pilot services, and
- safety of the environment through the pollution prevention and emergency response.

Shipping inspectors monitor ships and their operations to ensure the general safety obligations and standards set by the Act are complied with, to ensure the registration, licensing, permits and accreditation provisions of the Act are complied with and to investigate and report on marine incidents.

Issues impacting on Maritime Safety Queensland's future delivery of its workplace health and safety responsibilities include:

- consideration by COAG of a single national approach to maritime safety for commercial vessels
- growth of number of trade shipping vessels and the increasing demands on MSQ's monitoring and marine pilot services
- increased industry competition and pressures, coupled with the remoteness of operators, makes regulating the commercial fishing industry difficult, and
- growth of recreational vessel registrations and increasing demands on MSQ relating to information provision, monitoring and incident response.

## Rail Safety

Rail Safety administer the rail safety provisions of the *Transport Infrastructure Act 1994* and its associated Dangerous Goods by Rail Regulation. The *Transport Infrastructure Act 1994* establishes a regime that contributes to rail transport

effectiveness and efficiency, and provides for adequate levels of rail safety. The regulation seeks to reduce risk arising from the transport of dangerous goods by rail and to give effect to the standards, requirements and procedures of the Australian Dangerous Goods Code.

All railway managers and/or railway operators within Queensland are required to be accredited. There are 29 accredited rail operators running on more than 10 000kms of track throughout the state, ranging from large passenger and freight operators, to heritage and historical railway museums. Rail Safety's primary concern is the safety of railway operations.

Rail Safety major activities are summarised below:

- accredit railway managers and operators, involving a rigorous assessment to determine whether an operator has the competency and capacity to manage all safety risks
- approve management systems
- deliver inspection and auditing services to ensure compliance with the legislation and safety management systems, including participating in national audit programs
- coordinate, review and where appropriate, participate in rail incident investigations
- collate incident data reported by accredited operators and monitor for trends
- develop and implement level crossing safety strategy
- competent authority for the transportation of dangerous goods by rail, and
- monitor, audit, investigate and enforce compliance with dangerous goods legislation.

Over the past few years, Rail Safety has been involved in the development of the national model Rail Safety Bill and regulations led by the National Transport Commission. The *Transport (Rail Safety) Bill 2008* has recently been introduced into the Queensland Parliament. The objective of this Bill includes improving the safe carrying out of railway operations, managing the risks associated with railway operations and controlling particular risks arising from railway operations. The Act will regulate all railway operations, whether they are owned privately or by government.

Issues affecting Rail Safety's future delivery of its workplace health and safety responsibilities include:

- commencement of the *Transport (Rail Safety) Bill 2008*
- possible establishment of a national rail safety regulator, and
- continued development and implementation of national rail safety guidelines

## **Road Transport Safety**

Queensland Transport (QT) is the lead agency for road safety but the program is jointly coordinated with Queensland Police Service, the Department of Main Roads and the Department of Justice and Attorney-General.



The principal road safety legislation, the *Transport Operations (Road Use Management) Act 1995*, affects all road users in Queensland and therefore contributes to public safety and worker safety. The Act is supported by ten sets of regulations covering various areas including road rules; driver licensing; mass, dimensions and loads; vehicle registration; and vehicle standards and safety. Of specific relevance to the scope of the Review are:

- Transport Operations (Road Use Management – Dangerous Goods) Regulation 1998 which seeks to reduce, as far as practicable, risks arising from the transport of dangerous goods by road; and to give effect to the standards, requirements and procedures of the Australian Dangerous Goods Code. The Regulation places obligations on vehicle owners, vehicle drivers, consignors, packers, loaders and manufactures of containers and tanks.
- Transport Operations (Road Use Management – Fatigue Management) Regulation 1998 seeks to manage the fatigue of drivers to help ensure they are in a fit state of health and wellbeing to drive a heavy vehicle safely. It applies to drivers of heavy vehicles on roads and road-related areas, and their employers, and also places obligations on consignors. It limits the amount of time a person may spend driving (and performing other work related activities) in any 24 hour period, and also the period they may spend driving in any 168 hour period.

As at April 2008, Road Transport Safety employed 170 transport inspectors, who deliver an annual inspection regime for heavy vehicles and commercial vehicles, with approximately 67 000 vehicles inspected annually. In 2006–2007, transport inspectors also performed more than 27 000 random inspections of light vehicles to check compliance with vehicle standards. The agency contributes to the delivery of information and advisory services through road safety advertising campaigns.

### **Radiation Safety**

The objective of *Radiation Safety Act 1999* is to protect persons and the environment from the harmful effects of particular sources of ionising radiation and harmful non-ionising radiation.

The Act regulates the acquisition, possession, use, transport and disposal of radiation sources, radiation apparatus and radioactive material.

It requires persons who perform these functions to be licensed and also that persons who undertake a radiation practice have an approved radiation safety and protection plan for the practice to ensure the health and safety of any person, or the environment, is not adversely affected.

Inspectors conduct investigations and inspections to monitor and enforce compliance with the Act. Inspectors' powers include the power to enter a place, search, inspect, collect evidence, require information of persons and seize evidence.

## Appendix 8: Relationship between Acts

Act	Relationship with other health and safety legislation
<i>Coal Mining Safety and Health Act 1999</i>	No exclusions apply – but see references under other Acts.
<i>Dangerous Goods Safety Management Act 2001</i>	<p>The Act, other than for hazardous materials emergencies, does not apply to mines, land used to obtain, produce or transport petroleum, and pipes under the <i>Petroleum and Gas (Production and Safety) Act 2004</i> (unless within a major hazard facility or dangerous goods location).</p> <p>The <i>Explosives Act 1999</i>, <i>Petroleum and Gas (Production and Safety) Act 2004</i>, and <i>Radiation Safety Act 1999</i> prevail to the extent of any consistency with the Act*.</p>
<i>Explosives Act 1999</i>	The <i>Coal Mining Safety and Health Act 1999</i> and the <i>Mining and Quarrying Safety and Health Act 1999</i> prevail to the extent of any inconsistency with this Act*.
<i>Electrical Safety Act 2002</i>	The substantive parts of this Act (Part 2 – Electrical Safety Obligations; Part 3 – Enforceable Undertakings; Part 4 – Licences, in Relation to Electrical Contractors) do not apply to mines and electrical installations (e.g. switchboards) or equipment used for generating electricity in petroleum plants (unless the equipment is operated by an electrical entity).
<i>Mining and Quarrying Safety and Health Act 1999</i>	The Act enables a mine, or a part of a mine, to not be subject to this Act by regulation, in which case the <i>Workplace Health and Safety Act 1995</i> applies. The regulation prescribes electrical works operated by an electrical entity (other than Comalco Aluminium Ltd).
<i>Petroleum and Gas (Production and Safety) Act 2004</i>	<p>The requirement for Safety Management Plans applies to major hazard facilities only to the extent that the <i>Dangerous Goods Safety Management Act 2001</i> does not apply*.</p> <p>The requirement for Safety Management Plans applies on mining leases, although in the case of coal mines only applies to specified coal seam gas activities.</p>
<i>Radiation Safety Act 1999</i>	No exclusions apply – but see references under other Acts.
<i>Transport (Rail Safety) Bill 2008</i>	<p>The Act does not apply to rail operations where it is part of and used solely for mining operations and is not connected to a rail network.</p> <p>The Act does not apply to the extent that the <i>Electrical Safety Act 2002</i> applies*.</p> <p>A person must comply with this Act and the <i>Workplace Health and Safety Act 1995</i>. The <i>Workplace Health and Safety Act 1995</i> prevails to the extent of any inconsistencies*.</p>
<i>Transport Operations (Marine Safety) Act 1994</i>	No exclusions apply.

Act	Relationship with other health and safety legislation
<i>Transport Operations (Road Use Management) Act 1995</i>	No exclusions apply – but see reference under <i>Workplace Health and Safety Act 1995</i> .
<i>Workplace Health and Safety Act 1995</i>	<p>The Act does not apply to mines, operating plant under the <i>Petroleum and Gas (Production and Safety) Act 2004</i> on a petroleum tenure, and a facility or plant used for geothermal exploration or used for drilling or related purposes.</p> <p>The Act applies concurrently with the <i>Explosives Act 1999</i>, the <i>Radiation Safety Act 1999</i>, the <i>Transport Operations (Marine Safety) Act 1994</i>, the <i>Transport Operations (Road Use Management) Act 1995</i>.</p> <p>The Act does not apply <i>to the extent</i> that the <i>Electrical Safety Act 2002</i> applies*.</p> <p>The Act does not apply <i>to the extent that</i> the <i>Petroleum and Gas (Production and Safety) Act 2004</i> and the <i>Geothermal Exploration Act 2004</i> applies in relation to the design or construction of operating plant that impacts on the integrity or safe use of the plant*.</p> <p>The Act does not apply to the extent that Division 2, Part 3 (Rail transport operators and particular contractors) of the <i>Transport (Rail Safety) Act 2008</i> applies.</p>

\* Indicates areas of ambiguity that require amendment.

## Appendix 9: Description of Other Jurisdictions OHS Regulators

### Health and Safety Executive (Great Britain)

Most risks to health and safety arising from work activity in Great Britain are regulated through a single legal framework, the *Health and Safety at Work, etc. Act 1974* (the HSW Act). The Health and Safety Commission and the Health and Safety Executive were originally established under the HSW Act as two separate non-departmental public bodies. From 1 April 2008, the Health and Safety Commission and the Health and Safety Executive were merged to form a single national regulatory body responsible for administering the HSW Act. The merged body will be known as the Health and Safety Executive.

The HSE's regulatory concerns remain principally the same and include nuclear institutions; hazardous installations such as chemicals and explosives manufacturing and storage facilities; mines; offshore gas and oil installations; gas grid safety; movement of dangerous goods and substances; and construction, agricultural and other general workplaces. Approximately 3500<sup>28</sup> inspectors, policy advisors, lawyers, scientists and medical experts, statisticians and economists are employed by the HSE. The inspectors are organised into directorates on the basis of industry sectors. In addition, over 400 local government authorities are responsible for enforcement in lower risk workplaces, such as retail and finance<sup>29</sup>.

On 1 April 2006, responsibility for rail safety was transferred from the HSE to the independent statutory body, the Office of Rail Regulation (the ORR) to create a single integrated safety and economic rail regulator. The ORR covers the safety of the travelling public as well as workers on the railways.

### Victorian Workcover Authority

The Victorian Workcover Authority (VWA) is a body corporate responsible for managing Victoria's workplace safety system including workplace health and safety and workers compensation. The VWA and its Board are established under the *Accident Compensation Act 1985*. The Board sets the framework for the achievement of the VWA's objectives and oversees strategic planning, policy development, and auditing exercises, and reviews management performance. Management of the operations and administration of the VWA is delegated to the chief executive.

One of VWA's business units, WorkSafe Victoria, is the occupational health and safety regulator and administers the following legislation:

- *Occupational Health and Safety Act 2004*
- Occupational Health and Safety Regulation 2007, which includes regulations for major hazard facilities and mine safety
- *Dangerous Goods Act 1995*, which includes explosives
- *Road Transport Reform (Dangerous Goods) Act 1995*, which covers the safe transport of dangerous goods by road, and

<sup>28</sup> Source: HSE Staffing by Division/Directorate 1 April 2003 – 1 April 2007, [www.hse.gov.uk/aboutus/reports/staff.htm](http://www.hse.gov.uk/aboutus/reports/staff.htm) accessed 14 May 2008.

<sup>29</sup> Health and Safety Executive, *The Health and Safety System in Great Britain*, p.1.

- *Equipment (Public Safety) Act 1994*, which regulates high risk equipment used in public or private premises.<sup>30</sup>

Responsibility for the regulation of occupational health and safety in mines and quarries was transferred from the Department of Primary Industries to VWA on 1 January 2008 in accordance with the recommendations of an independent inquiry<sup>31</sup>.

### **Department of Consumer and Employment Protection (Western Australia)**

The Department of Consumer and Employment Protection (DOCEP) comprises Consumer Protection (fair trading regulator), Labour Relations (employment and industrial relations regulator), EnergySafety, WorkSafe and Resources Safety.

EnergySafety is headed by an independent statutory officer and is responsible for the technical and safety regulation of all the electrical industry and most of the gas industry in Western Australia, including:

- electricity production
- electricity transmission and distribution
- electricity utilisation (consumers' installations and appliances)
- gas distribution (and gas production plants connected to gas distribution systems), and
- gas utilisation (consumers' installations and appliances).

WorkSafe is responsible for the administration of the *Occupational Health and Safety Act 1984*, which applies to all workplaces, except mines, petroleum wells or petroleum pipelines.

Resources Safety is responsible for the health and safety regulation of dangerous goods, mining, and major hazard facilities. It administers the *Mines Safety and Inspection Act 1994*, *Dangerous Goods Safety Act 2004* and other relevant legislation, and provides petroleum safety regulatory services and technical advice to the Department of Industry and Resources, Western Australia.<sup>32</sup>

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<sup>30</sup> For further information see Victorian Workcover Authority  
<http://www.workcover.vic.gov.au/wps/wcm/connect/WorkSafe/Home/>

<sup>31</sup> For further information see Pope, N. 2006, *Report into the Regulation of Occupational Health and Safety in Victoria's Earth Resources Industries*.

<sup>32</sup> For further information see DOCEP <http://www.docep.wa.gov.au/index.htm>

## Appendix 10: Comparison of Organisational Options

Criteria	OPTIONS		
	Transfer CHEM Services (DES) to DEIR	Transfer DME regulators to DEIR	Statutory Authority – DME regulators, WHSQ, CHEM Services & ESO
<b>Improve worker health and safety outcomes</b>	No change	Risk that high mining safety outcomes will be compromised if technical skills are diluted or existing compliance approaches are changed Regulators may acquire broader knowledge/skills	Risk that high mining safety outcomes will be compromised, although this will be mitigated if a new organisational culture evolves Regulators may acquire broader knowledge/skills
<b>Reduce the regulatory impact on business</b>	Minor benefits to MHFs (CHEM Services are already active in coordinating audits, etc) Will positively support the amalgamation of dangerous goods and hazardous substances	Minor benefits in the gas industries and in the regulation of explosives No benefits to the mining industry as it is separately regulated	Minor benefits in the gas industries and in the regulation of explosives No benefits to the mining industry as it is separately regulated
<b>Improve the efficient use of government resources</b>	No change Small size of CHEM Services will not influence economies of scale	No change – any economies of scale in DEIR will be offset by losses in DME	Will be costs involved in establishing and maintaining a statutory authority Will jeopardise the future viability of DEIR (over 40% of DEIR staff are in WHSQ/ESO) Minor scope to share overheads (e.g. WHS policy)

Criteria	OPTIONS		
	Transfer CHEM Services (DES) to DEIR	Transfer DME regulators to DEIR	Statutory Authority – DME regulators, WHSQ, CHEM Services & ESO
<b>Enhance independence and transparency</b>	No change	Will remove any perception of regulatory capture in the mining industry	Will remove any perception of regulatory capture in the mining industry If the authority does not represent the state, will remove any perception that government does not adequately regulate WH&S within the government
<b>Improve industry funding</b>	No change	No change	No change
<b>Develop a contemporary, responsive and effective inspectorate</b>	WHSQ may acquire broader skills/knowledge from CHEM Services	Risk that high mining safety outcomes will be compromised if technical skills are diluted or existing compliance approaches are changed	Potential to enhance a contemporary whole-of-government approach mitigated if a new organisational culture evolves Creates an opportunity for a higher public profile for WH&S matters
<b>Improve stakeholder engagement</b>	Will be positively received from the relevant stakeholders (MHFs)	Will alienate all mining stakeholders	Will alienate all mining stakeholders, although this will be mitigated if a new organisational culture evolves Industry/unions would support the opportunity to be on the governing board
<b>Improve organisational alignment with others areas of government with shared goals</b>	Will strengthen alignment between CHEM Services role (MHFs and dangerous goods) and DEIR (hazardous substances)	Will be potential benefits in the amalgamation of workplace health and safety regulators	Will be potential benefits in the amalgamation of workplace health and safety regulators Government may be concerned that an independent regulator may not be responsive to government priorities
<b>SUMMARY</b>	<b>Supported</b>	<b>Not supported</b>	<b>Not supported</b>

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<http://www.legislation.qld.gov.au/LEGISLTN/ACTS/2005/05AC052.pdf>