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Significant issues and trends



Emerging issues and trends

The following section outlines the department's actions to remain customer focused, as well as significant judicial decisions and progress highlights on the department's area of responsibility to the Community Development and Justice Standing Committee *Enough is Enough* report recommendations.

Compliance with mining environmental conditions

In December 2022, the Office of the Auditor General (OAG) released a report into the effectiveness of DMIRS and the Department of Water and Environmental Regulation as regulators of the resources industry, through compliance with mining environmental conditions, for both minerals and petroleum.

DMIRS is committed to ongoing continual improvement and will develop measures in addition to those recommended by the OAG to ensure a responsible resources sector.

The previous OAG report on the same topic was published in 2011. Based on the 2011 report, the department implemented significant changes to its operational assessment and compliance processes for improved oversight of mining activities. This included the implementation of the Mining Rehabilitation Fund to deal with the financial issues arising from legacy and abandoned mines. Programs that are still successfully running today.

The 2022 OAG report highlighted concerns about the management of compliance and enforcement by both agencies. In addition to COVID-19 travel restrictions and a need to prioritise approvals over compliance for a portion of the year (by addressing compliance through a range of other activities) there were also underlying issues related to staff attraction and retention. The Auditor General made six recommendations to strengthen the approach to environmental regulation in the resources sector, enhance the department's ability to assess compliance independent of information provided by the companies and transparency of enforcement actions.

In the last year, the Resource and Environmental Compliance division purchased high resolution satellite imagery to view resource operations from above and increased transparency around policies as part of improvements being made, as well as, successfully delivering their 2022–23 compliance plan.

During the year the division completed:

- 85 site inspections;
- 294 desktop compliance reviews;
- 74 compliance investigations;
- 9 incident investigations, resulting in penalties In Lieu of Forfeiture totalling \$306,800; and
- Issued eight enforcement actions for non-compliant petroleum activities.

Of the six OAG recommendations made, four are already completed with the remainder in progress and expected to be finalised by the end of 2023–24. Additional work is underway to transform the way compliance is regulated.

The department continues to engage with stakeholders with the reforming environmental regulation program to improve outcomes and is committed to ensuring the highest regulatory standards are developed and maintained.

Recommendations completed





Modernising rental and accommodation laws

Short-term rental accommodation

In November 2022, responsibility for developing a registration scheme for short term rental accommodation providers was transferred from the Department of Local Government, Sport and Cultural Industries to DMIRS. The register will enable state and local government policy makers to monitor the size and scope of the sector to inform any regulatory response, and facilitate effective and consistent enforcement. An Act to implement the scheme is being drafted.



Economic climate and supply constraints in the housing sector are impacting the cost and availability of rental accommodation.

Supporting builders, increasing supply

Following a Cabinet meeting in April 2023, the Australian Government announced tax incentives for 'build to rent' properties in order to increase the supply of housing. These changes will complement the WA Housing Strategy 2020–2030 and expected to result in an increased home building activity, which is expected to improve housing supply and gradually ease pressure on the rental market.

Residential tenancies

Western Australian's experiences of renting have changed considerably from when the *Residential Tenancies Act 1987* was first introduced. Gone are the days when people predominantly rent for a short period when they first moved out before buying their first home. Today, people are more likely to rent for much longer periods of time and for some, they rent for their entire lives.

The department contributed to the State Government's commitment to review renting laws to ensure they are fit for purpose and is currently in the process of drafting amendments. The proposed amendments include the prohibiting of rental increases more than once per year and soliciting rent bidding. Tenants will be allowed to make some minor modifications to the property and keep pets.

The Commissioner for Consumer Protection will be given powers to determine dispute resolution on bonds, pets and minor property modifications, diverting minor matters from the Magistrates Court.

Responding to an evolving energy sector

The evolving energy sector has resulted in an increasing demand for the department's Building and Energy's services.

The emergence and proliferation of:

- decentralised generation, microgrids and stand-alone power systems;
- battery storage systems directly integrated into the grid and connected to the grid via consumers' installations;
- new behind-the-meter supply arrangements;
- electric vehicles and the installation of charging assets in residential premises;
- use of relatively high-capacity batteries in consumer devices (e.g. e-scooters and e-bikes); and
- cheaper and more efficient hydrogen fuel-cell technology

all speak to a constantly evolving regulatory landscape for the department.

To ensure the safety of the community legislative regimes, technical standards and industry guidance materials have had to be adapted to keep pace with change. DMIRS have adapted its inspection and compliance regime to address these emerging issues.

Building reform

Ensuring Western Australia's building legislation remains responsive and adaptive to developments in the building industry and supports consumer confidence remains a priority.

In the coming year, the department will continue to work closely with industry and local governments to modernise WA's building regulatory framework to implement appropriate recommendations from the *National Building Confidence* report.

The primary focus for DMIRS will be on improving the design, approval and construction of commercial and residential buildings in WA. Focus will also be placed on the laws governing builder registration and the powers of the Building Commissioner and Building Services Board.



Reforms to plumbing regulation

The department has continued to lead major reform to the State's plumbing legislation to ensure public health risks posed by waterborne contaminants are appropriately managed through robust plumbing regulation. Implementing the Government's recent commitments to adopt the 2022 edition of the National Construction Code (of which the Plumbing Code of Australia is a part) and amendments to the existing plumbers licensing and plumbing standards regulations will increase the scope of regulated plumbing work that requires inspection. As a result, the Government has committed to increasing resources from 2023–24 onwards to increase inspection and compliance activities related in this area.

Further amendments will soon be made to the regulations to expand the scope of regulated plumbing work to cover gaps in the existing regulatory framework ensuring safe and compliant drinking water supply systems are installed and maintained throughout the State. Where appropriate, unnecessary regulation will be removed to also allow home owners and occupiers to carry out certain minor plumbing work such as replacing tap and cistern washers, water filter cartridges and shower heads.

Keeping consumers safe online

The growth of the e-commerce sector is expected to continue to have an impact on the way the department addresses consumer harm.

The international aspect of e-commerce impacts the ability to enforce regulation and the complexity of establishing evidentiary issues puts pressures on investigations. Regulation is also increasingly unable to keep up with rapidly changing digital marketing and sale practices, including drop-shipping and dark patterns.

In this environment, the department's ability to keep consumers safe becomes more challenging, creating an increasing need for regulators to find better and more effective ways to educate consumers in digital literacy and disrupt harmful practices. The digital marketplace has also expanded the consumer cohort to much younger generations who receive their information in different ways.

Ensuring the department can be responsive and adopt relevant regulatory strategies, will see the need to develop targeted and effective evidence based interventions. Subsequently, DMIRS requires an adaptive and skilled workforce who can adopt change.





Progressing the MARS program

The department is the lead agency for the Mental Awareness, Respect and Safety (MARS) Program. Since its establishment in 2021, the \$8.4 million program is a collaboration with mining industry stakeholders to deliver a range of initiatives that will address culture and work environment concerns in the mining industry.

The Mental Health Commission, Equal Opportunity Commission, Department of Communities and Circle Green Community Legal were some of the key stakeholders that worked with the department over the last year. Together with the stakeholders, the department planned and delivered a range of initiatives that work towards ensuring safe workplaces for all WA employees. Progressed implementation of the *12 Respect@Work* report recommendations applicable to the State Government and developing a whole-of-government sexual violence prevention strategy. Other key achievements during 2022–23 include:

- Thrive at Work Masterclass Series and supporting toolkits were delivered by Future of Work Institute to 19 prominent mining companies in early 2023. This initiative aims to build the capability of mining workplaces to prevent harm and protect against psychological risks. The success of this program has been demonstrated through participants creating a Community of Practice, a professional learning strategy that aims to embed learning through collaborative practices.
- Establishment of the Professorial Chair in Mining WHS with Edith Cowan University to drive leadership and research in mining work health and safety. This position will use its profile to advocate for, and innovate towards, physically and mentally healthy workplaces within the mining industry, establishing Western Australia as a leader in this area.
- The MARS team supported by the broader WorkSafe Group, conducted planning for a major event, the Mining Industry Summit – Driving Respect. The Mining Industry Summit to be held early in 2023–24 aims to educate, inspire and empower leaders to drive respect and take meaningful action towards preventing and responding to workplace sexual harassment.



Responding to findings in the mining industry



The department has progressed a number of initiatives that support the recommendations of the *Enough is Enough* report.

Surveys

Surveys are being conducted to support the four-year landmark study, being undertaken by the Centre for Transformative Work Design at Curtin University, reports are available on the

MARS webpage. The department has conducted on-site People at Work surveys which have improved communication between the regulator and mine sites to meet compliance standards. Due to these surveys, two cases have resulted in the identification of legislative breaches and five cases led to staff engaging with mine site management to improve psychosocial risk management at the site. Further surveys are planned over the next financial year.

Anonymous audit, technical guide and survey tools to protect complainants have been developed and are used by inspectors when conducting inspections and surveys.

RECOMMENDATION 10 12

15 sites surveyed

1,469 online responses received.

System enhancements

Increased confidentiality and anonymity software enhancements have been applied to psychosocial reports in the WorkSafe Safety Regulation System. The system is due for replacement in 2026 by the Compliance and Regulatory System which will incorporate enhanced security measures as well as ensuring data management capability to enable sexual harassment and sexual assault reporting.

RECOMMENDATION 12 14 18

Memorandum of Understanding

Memorandum of Understanding (MOU) between DMIRS, WorkSafe and the WA Police Force has progressed systems of work for the purposes of information sharing. MOU discussions continue to progress to ensure contemporary arrangements for each agency's responsibility. Updates regarding the MOU will be provided where appropriate and where permitted by law once the MOU is finalised.

RECOMMENDATION 13 19

Legislative reform

The department has amended the WHS regulations to include a definition of psychosocial hazard to cover sexual harassment and formally impose a duty on a Person conducting a business or undertaking to manage risks of psychosocial hazards, see page 178.

Following the Law Reform Commission Western Australia's review of the *Equal Opportunity Act 1984*, drafting of a new act is underway which will ensure broad consistency with other Australian jurisdictions. Relevant recommendations from the review that are complementary to the recommendations from the *Enough is Enough* report are also being considered for implementation.

RECOMMENDATION 20 21 23

The department has established a specialist team led by a Regional Inspector (Manager), to investigate, assess and deal with sexual harassment and assault reports.

RECOMMENDATION 24



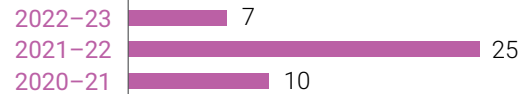
Statistics on reports received

Reports received during 2022–23 of a sexual harassment or sexual assault nature resulted in 22 workplace inspections by the new Mental Health and Wellbeing specialist team. Furthermore, reported incidents over the past 12 months in the mining sector also resulted in 12 improvement notices and 21 requests for historical reports.

Sexual harassment reports



Sexual assault reports



The *Enough is Enough* report was tabled in September 2022 and as a result of the inquiry there is increased awareness to report incidents of sexual harassment and sexual assault to WorkSafe. A large number of the reports illustrated above are as a result, of historic reports submitted, instead of being reported at the time that they occurred. WorkSafe continues to conduct proactive inspections and audits informed by incident reports, enquiries and complaints received.

RECOMMENDATION 14

Training and awareness

A number of small-to-medium mining companies are participating in the Department of Communities' Respect in Mining pilot initiative which includes bystander training and embedding respectful relationships.

Workshops to strengthen understanding of the current gender diversity and management of risks of sexual harassment and violence on mines sites was delivered. In addition, 21 companies participated in the Response, Investigation and Management of Sexual Harassment in the Workplace training that was developed, supported and delivered in partnership with industry and educational experts. Furthermore, FIFO Focus provided specialist investigations training on sexual harassment to WorkSafe inspectors.

RECOMMENDATION 12 15

Regulatory capability

The department is acting on recommendations in the PwC report on the regulatory capability of the Mines Safety directorate to respond to incidents of sexual harassment.

RECOMMENDATION 22

Encouraging industry

Industry transition to the new work health and safety laws is being supported through the WHS implementation peak body grants program, which includes psychosocial requirements and reporting obligations. The department is continuing to explore options for issuing formal guidance to the industry in relation to the use of non-disclosure agreements.

RECOMMENDATION 15 17

Supporting affected parties

DMIRS is committed to supporting affected parties of sexual harassment and assault in mining. A free guidance and referral service is being provided by Circle Green Community Legal to victims of historical workplace sexual harassment and assault in the mining sector. The Government's funding to Circle Green has provided custom triage and non-legal social work support to people that have been affected by workplace sexual harassment in the mining sector. In collaboration with University of Western Australia McCusker Centre for Citizenship, DMIRS is developing an online, self-paced tool for affected persons that is scheduled to be launched in 2023.

RECOMMENDATION 1 12



Protecting workers in lead-risk process industries

As part of the WorkSafe Dust Strategy 2023–24 there has been a focus on lead risk process industries, resulting in significant education, compliance and enforcement action. Some activity is ongoing however, the following significant outcomes are noted for 2022–23.

Multiple inspections of a small scale foundry resulted in 12 improvement notices for a variety of failures and issues including but not limited to:

- keeping the lead process area clean;
- shower and change room facility exposed to lead process area;
- workers not wearing respiratory protective equipment and not clean shaved;
- failure to review control measures;
- failure to ensure frequency of lead health monitoring; and
- failure to provide health monitoring for respirable crystalline silica.

A new lead acid battery recycling business was inspected during the commissioning phase to help guide the owner of any emerging compliance issues. A verification visit was conducted six months later and identified the following issues:

- lack of guards for conveyor belts and other plant machinery;
- incorrect handling or moving dry lead material;
- inappropriate management of decontamination facility;
- spillage of lead paste;
- failure to review control measures in relation to lead exposure; and
- exposure of workers to psychosocial hazards in the workplace.

Enforcement action was taken to address the hazard/breaches. This inspection and enforcement activity assisted the business to embark on their new operation with a clear understanding of compliance.

